

considered this matter, and you have authorised me to say that you will accept the amendment of the Hon'ble Member."

The Hon'ble MR. OLDHAM said:—"I should like to say a few words to explain the history of the matter. The Bill as it came to us in Select Committee provided for a quarterly meeting. When we got up to section 70 (*now* 77), the representatives of the Corporation were able very easily to persuade us that those meetings should be increased. Then we let the matter stand. We thought it had been settled, and we went on developing the powers of the Corporation, increasing its business at almost every step and not increasing the number of meetings. I think, if we had come back to this section, we should have arranged for monthly meetings."

The motion was then put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE's amendment of section 70 (*now* 77) having been accepted, the Hon'ble MR. APCAR, by leave of the Council, withdrew the motion, standing in his name, that in section 70 (*now* 77), sub-section (1), for the words "two months" the word "month" be substituted.

He said:—"This motion is in exactly the same terms as the previous one."

The Hon'ble BABU JATRA MOHAN SEN moved that in sub-section (2) of section 70 (*now* 77), "five" be substituted for "seven".

He said:—"I am aware that the figure in the Bill, before it was submitted to the Select Committee for the second time, was 10, and it was reduced to 7, I believe, in consequence of the reduction of the number of the Commissioners. Although this reduction has been made, I venture to submit that the requirement has not been met. I shall take a concrete instance. Under the section as it originally stood 10 Commissioners from five wards could have demanded a calling of a meeting; but now as the number of Ward Commissioners has been reduced to one each, it will be necessary for seven Ward Commissioners to join. Therefore the privilege is curtailed, although the intention of the reduction seems to be to retain obviously a proportion to the reduction of the number of Commissioners; but this is the effect, and I would strongly recommend that five be substituted for seven. It would do no harm, although every harmless amendment need not be carried, but if it is erring, it is in the right direction. If five Commissioners express a desire to convene a meeting, I think their wishes ought to be acceded to."

The Hon'ble MR. BAKER said:—"It seems to me this is a pure question of arithmetic, and the Ward Commissioners have nothing to do with the matter. When the Corporation consisted of 75 Commissioners, it was the law that any 10 of them could call upon the Chairman to call a special meeting. When that number was reduced from 75 to 50, we made a proportionate reduction in the number of Commissioners who could make that call on the Chairman. Our reduction was unanimously agreed by all the members of the Select Committee, and I really think there is nothing further to be said."

The Hon'ble BABU JATRA MOHAN SEN said:—"I would only add in reply that five members are quite sufficient to ask for the convening of a meeting."

The motion was then put and lost.

SECTION 80.

The Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the motion, standing in his name, that the last three lines of section 73 (*now* 80) be omitted.

SECTION 81.

The Hon'ble BABU SURENDRANATH BANERJEE moved that—

(1) the words "or, in his absence, the Vice-Chairman or the Deputy Chairman, as the Chairman may direct," in lines 1, 2, and 3 of sub-section (1) of section 74 (*now* 81), be omitted;

(2) the words "Vice-Chairman and the Deputy Chairman" in lines 1 and 2 of sub-section (2) of section 74 (*now* 81) be omitted.

He said:—"The Bill provides that in the absence of the Chairman, and under his direction, the Vice-Chairman or the Deputy Chairman may preside, and on every such occasion the Vice-Chairman or the Deputy Chairman, as the case may be, shall vote, and when necessary shall have a casting vote. Now neither the Vice-Chairman nor the Deputy Chairman is a member of the Corporation, and it is an anomaly that gentlemen, who are not members of the Corporation, should be called upon at a minute's notice to act as President of a meeting of the Corporation. The President of a meeting of the Corporation should be a member of that body, and it does seem to me to be a sort of affront to the Corporation that either the Vice-Chairman or the Deputy Chairman should be called upon to preside at a meeting of the Corporation, when there are members of the Corporation who are willing and competent to preside. Am I to understand that, with the exception of the Chairman, there is no member of the Corporation fit to preside over that body; that the Vice-Chairman and the Deputy Chairman, who are strangers to the method of proceeding adopted at meetings of the Corporation, are better qualified to preside than members of the Corporation who are familiar with the procedure at such meetings? It is wholly illogical that the Vice-Chairman and the Deputy Chairman, who would be absolutely strangers to the Corporation, should preside. What I am trying to establish is that the members of the Corporation being familiar with the work of the Corporation, being familiar with the work transacted at meetings of the Corporation and the method in which business is done at such meetings, are better qualified to preside in the absence of the Chairman than the Vice-Chairman or the Deputy Chairman who are not members of the Corporation and are not familiar with the work and proceedings of the Corporation. In curing one anomaly, you are driven to another, and you are obliged to provide by way of explanation that for the purposes of this section the Vice-Chairman and the Deputy Chairman shall be deemed to be Municipal Commissioners. I do not think that in any municipal law in the world you will find such a provision. In the absence of the Chairman, I think a member of the Corporation should preside over the deliberations of that body. I hope that, under the circumstances, the Council will see its way to accept these amendments."

The Hon'ble MR. BAKER said:—"I am authorised to say that we accept these amendments."

The motions were severally put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE's amendments in section 74 (*now* 81) having been accepted, the Hon'ble MR. APCAR, by leave of the Council, withdrew the following motions standing in his name:—

- (1) that in section 74 (*now* 81), sub-section (1), the words "or in his absence, the Vice-Chairman or the Deputy Chairman, as the Chairman may direct," be omitted; and
- (2) that in section 74 (*now* 81), sub-section (2), the words "the Vice-Chairman and the Deputy Chairman" be omitted.

SECTION 82.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the *explanation* to section 75 (*now* 82) be omitted.

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE's motion for the amendment of section 75 (*now* 82) having been accepted, the Hon'ble MR. APCAR, by leave of the Council, withdrew the similar motion standing in his name.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that, at the end of section 75 (*now* 82), paragraph 1, the words "from the beginning to the end of the meeting" be added.

He said:—"I cannot persuade myself to believe that the omission of these words is intentional. I think that in the interests of the Corporation these words, which find a place in section 84 (*now* 91), should be added."

The Hon'ble Mr. BAKER said:—"The hon'ble mover of the amendment is quite right. That is the intention."

The motion was put and agreed to.

SECTION 83.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved that in section 76 (now 83), line 2, "three" be substituted for "five."

The Hon'ble BABU JATRA MOHAN SEN moved that in section 76 (now 83), line 2, "three" be substituted for "five".

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"It has apparently been overlooked that in the original Bill, when there were 75 Commissioners, 18 formed a quorum at meetings of the Corporation, and five members could demand a poll. Under the new constitution introduced under the instructions of the Government of India, the Corporation will consist of 50 members, and 12 members will form a quorum; therefore the number of members entitled to demand a poll should also be reduced in proportion."

The Hon'ble BABU JATRA MOHAN SEN said:—"The amendment of which I have given notice is to the same effect. I think that the omission to reduce the number of Commissioners entitled to demand a poll is a pure oversight. In consequence of the reduction in the number of Commissioners, we have reduced the number to form a quorum from 18 to 12, and I think a corresponding reduction should be made in the number entitled to demand a poll."

The Hon'ble Mr. BAKER said:—"This is not an oversight, but was done deliberately after consideration whether we should make a proportionate reduction in the number required for demanding a poll. It was considered undesirable to make it too easy to demand a poll, as it takes up time and is thereby an obstruction to business. If three members can be got to demand a poll, it will not be difficult to get five to do so."

The Hon'ble BABU JATRA MOHAN SEN, in reply, said:—"In this Council any one member has a right to demand a poll, and I don't see why three members should not be allowed to do so in a quorum of 18. A poll often exercises a healthy influence on the votes of the Commissioners."

The motions were then put and lost.

SECTION 86.

The Hon'ble BABU SURENDRANATH BANERJEE moved that—

(1) the following clause be inserted after clause (b) of section 79 (now 86):—

"(c) every contract made by the Chairman involving an expenditure of one thousand rupees or less shall be reported by him, within fifteen days after the same had been made, to the Corporation."

(2) the following clause be inserted after clause (b) of section 79 (now 86):—

"(c) every contract made by the Chairman involving an expenditure of one thousand rupees or less shall be reported by him, within fifteen days after the same had been made, to the General Committee."

He said:—"Under the existing law and under this Bill also, the Chairman has power to enter into contracts of a value not exceeding Rs. 1,000, and his discretion is not fettered in any way; but when he has so entered into a contract my amendment proposes that he should report the fact to the Corporation; but if the Hon'ble Member in charge of the Bill objects to that, then I propose that he should report it to the General Committee. What I ask is that there shall merely be a report. I follow the precedent of the Bombay Act, but there the report is made not to the Corporation, but to the Standing Committee. I put it in the alternative form, so that if the Council do not accept the first view, then the report should be made to the General Committee. I hope that the last of these amendments at least will be accepted."

The Hon'ble MR. BAKER said:—"I cannot for one moment admit that these amendments are framed on the lines of the Bombay Act. In Bombay, in contracts up to Rs. 500, a report is not made to any one; from Rs. 500 to Rs. 5,000, a report is made to the Standing Committee; but under no circumstances is any reference made to the Corporation in Bombay, neither for sanction nor for report. And I object further. Under the present law, as the Hon'ble Member has told us, the Chairman spends money up to Rs. 1,000, and he reports to no one. Why should you tie his hands more strictly now? The Corporation must have approved the estimates: they must have been entered in the budget: all the Chairman has to do is to enter into a contract. Surely, the Chairman can be trusted to expend sanctioned sums of Rs. 1,000 without interference and without the necessity of making a report. It seems to me to be absolutely absurd to tie the Chairman's hands in the way here proposed, and it has no sort of resemblance to the system in force in Bombay.

The Hon'ble MR. BUCKLEY said:—"I also think this amendment is one which should on no account be accepted. I am prepared to go further than this Bill does in giving authority to the executive officers. When this matter came before the Select Committee, I tried to have greater powers vested in the Chairman, but I was defeated. I think the motion now brought forward illustrates the intense desire for centralisation which the Hon'ble Members display who are in favour of it. I desire to point out how very much greater are the powers entrusted by the Government to their officers in the matter of making contracts. An Executive Engineer in any part of India can accept a contract for Rs. 2,000, and, if the Local Government specially selects an individual Executive Engineer in whom they have confidence, he might enter into contracts to the extent of Rs. 5,000. In the Calcutta Municipality every contract of over Rs. 1,000 goes first to the officer in the position of an Executive Engineer; then it goes to the Engineer, then to the Chairman, and then to the General Committee, and the hon'ble mover of the amendment now wants it to go to the Corporation. It seems to me that red tape runs a very long way in the Municipality. In the Government service, a Superintending Engineer who occupies a position by no means so onerous as that of the Engineer of the Corporation can accept contracts up to Rs. 10,000, and, if he is an officer in whom the Local Government has confidence, he can accept contracts up to Rs. 20,000. There is a native gentleman in Calcutta who has the power of entering into contracts up to Rs. 2,000, and he carries them out with satisfaction. I cannot understand why the hon'ble mover of the amendment wants the Corporation to exercise control over such comparatively unimportant matters, and why he desires that the officers of the Municipality should have powers so much less than those which Government confers on its own servants in corresponding positions."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I don't mean that the Corporation shall exercise any control, but the Corporation being in charge of the financial concerns of the Municipality, and this being a matter of finance, a report should be made to the Corporation as regards these contracts. It will only be a report—the submission of a statement to the Corporation. It does not mean control or the exercise of any authority on the part of the Corporation over the action of the Chairman. All that I suggest is that the Chairman having entered into the contract should report the matter to the Corporation."

The motions were then put and lost.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the whole of line 5 in clause (d) of section 79 (now 86) be omitted; that the word "Corporation" be substituted for the words "General Committee" in line 8 of the same clause; and that clause (dd) of section 79 [now clause (d) of section 86] be omitted.

He said:—"The object of this amendment is to restore the present provision of the law. Under the existing law all contracts up to Rs. 1,000 in value are entered into by the Chairman, but all contracts above Rs. 1,000 and up to

one lakh are entered into by the Corporation, and all contracts above one lakh are also entered into by the Corporation but with the sanction of the Local Government. That is the existing law. What is proposed to be substituted for that law? The Bill provides that all contracts up to Rs. 1,000 shall be entered into by the Chairman, which is the present law; but that all contracts above Rs. 1,000 and up to Rs. 10,000 must be entered into by the General Committee. The power of the Corporation in respect of contracts between Rs. 1,000 and Rs. 10,000 is withdrawn, and the authority of the General Committee is substituted. All contracts above Rs. 10,000 and up to one lakh and all contracts above one lakh are to be entered into by the Corporation, the latter with the sanction of the Local Government. I cannot understand why there should be any change in the law relating to contracts, and I must express my very grave apprehension as to contracts being made by a small body like the General Committee. You don't know what the constitution of the General Committee will be—what the *personnel* will be. We hope it will be a fairly representative body, but our anticipations may not be fulfilled, and I must say, with the experience I have had of the Corporation, that it is not safe to entrust the final decision, in regard to contracts of the value of from Rs. 1,000 to Rs. 10,000, to such a small body as the General Committee. Perhaps it will be more strictly correct to say that it will be safer to entrust it to the larger than to the smaller body. Has the present system worked badly? I have not heard the Hon'ble Member in charge of the Bill say so. Large contracts involving the expenditure of lakhs of rupees have been entered into by the Corporation, and I do not know that they have given rise to any scandals. The Corporation has done its duty well, and I hope the Council will see its way to keep the law in its present state."

The Hon'ble MR. BAKER said:—"The hon'ble mover of the amendment asks why we are changing the law. Under the present law the Chairman can enter into contracts up to Rs. 1,000 in value, and contracts in excess of that sum are entered into by the Corporation, and he wishes to know why we are making any change in the law. The reason is the constitution of a system of co-ordinate authorities by which we are interposing the General Committee as a co-ordinate authority between the Chairman and the Corporation, a working body standing midway between the two. Therefore, it is only logical that, up to a certain amount, the sanction of the General Committee should be sufficient, and that it should not be necessary in such cases to obtain the sanction of the Corporation. In Bombay this system is carried much further; the power of entering into contracts extends no further than the Standing Committee. No contract, however large, requires the previous sanction of the Corporation. The Hon'ble Member also said that we are unable to see what the composition of the General Committee will be, and, therefore, it will be dangerous to entrust the power of entering into contracts to that body. We certainly cannot see into futurity, but we may be sure that the General Committee will consist of the pick of the Corporation; and if the composition of the Corporation is good, the composition of the General Committee will be better. If the General Committee is bad, the Corporation will be worse. Therefore, in either case, it will be better to give this power to the General Committee."

The Hon'ble MR. APCAR said:—"I desire to endorse every word of the warning given by the hon'ble the mover of the amendment, and I have, on a former occasion, expressed the apprehension I have of the danger there is in leaving the decision of entering into these contracts in the hands of a small body working with closed doors. I am deeply impressed with the conviction that it is infinitely better that such matters should be decided in the open light of day in a public meeting, and I am of opinion that the smaller the body, the greater the danger. I fear, very seriously, that the result will be of a most mischievous character to the rate-payers."

The Hon'ble MR. BUCKLEY said:—"Both the Hon'ble Members who have addressed the Council in support of this amendment have warned us in solemn language of the danger of giving the power of making contracts to the General Committee. In reply to those warnings, I wish to say that in the

course of an experience of thirty years, more or less, I have had a great deal to do with the making of contracts, and I can only recall two or, possibly, three cases of any possible suspicion against officers concerning the making of contracts. In the Public Works Department tenders are accepted or rejected, and contracts are often entered into by a single officer. If the General Committee is to be doubted and distrusted in the way these gentlemen represent, I am unable to imagine what the cause can be, or in what way the dangers which they apprehend can be avoided."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"We don't distrust the General Committee, but we say it is much safer to entrust the power of making contracts to a larger body than a smaller one. I hope my anticipations may not be fulfilled as regards the *personnel* of the General Committee. But it is all a jump into the unknown, and we ought not to give up a system which has worked well for an untried system which may not work well, and I submit that, as far as financial matters are concerned, the authority of the Corporation ought to be maintained. I hope the anticipations of the framers of the Bill may turn out to be correct. It is possible that our dark vaticinations may prove to be false. I hope they may be false; but as legislators we are not justified in leaving the sure path, guaranteed by experience, and embark upon an unknown venture. In matters of this kind it is better to follow the old lines, when those lines have led to success. It is a warning which I feel it my duty to give. You are abandoning the tried and beaten path, a sure path sanctified by experience, and you are adopting an unknown path which may lead to results that are unknown. I entirely object to any comparison between the Bombay and the Calcutta systems in this respect. [The Hon'ble Mr. OLDHAM:—"The system has worked well in the Calcutta Port Trust."] The authority of the Port Trust is supreme. The authority of the Corporation is not supreme. If the making of contracts was confined to a body like the Port Trust, and if the authority of that body was supreme, I would not object. The Corporation would then have the power of supervision and of revision; but here the final decision in regard to contracts is given to the General Committee. The Port Trust has supreme power; therefore I don't think the analogy holds good. I feel very strongly in this matter, and I am anxious for the purity of the Corporation. The weakest point in the Corporation is the making of contracts; we ought to be specially on our guard with regard to this particular matter, and we should make no change which might imperil the purity of the administration for which all of us are so solicitous. If you make a change in the law you take a big jump into the unknown, while you abandon the well-known beaten path, which has hitherto preserved the purity of the Corporation."

The motion being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Ranajit Sinha, Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi
Delawar Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendments were lost.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 79, clause (d) [now section 86, clause (c)], "five hundred" be substituted for "one thousand" and "five thousand" for "ten thousand".

He said:—"My following amendments might be taken with this one, as they all relate to the same thing: namely, that in section 80 (*now* 87), sub-section (2), lines 3 and 4, "five hundred" be substituted for "one thousand"; and that in section 81 (*now* 88), sub-section (1), line 5, "five hundred" be substituted for "one thousand". The object of the amendments which I have now the honour to propose is to curtail the power of the General Committee, and also to enlarge it in matters of contract. The present section requires the sanction of the General Committee when the contracts refer to sums of from Rs. 1,000 to Rs. 10,000. My proposal is that such sanctions should be required in the case of contracts of from Rs. 500 to Rs. 5,000. This, I think, is a matter of convenience and necessity. I do not know what the state of things is at present with regard to making of contracts, but I find that the Corporation recommend the change I propose, and I believe their recommendation is based on past experience. With these observations, I commend these amendments to the favourable consideration of the Government."

The Hon'ble MR. BAKER said:—"I can add nothing to what I have already said on this subject. This Bill, as the Hon'ble Mr. Buckley pointed out quite correctly just now, restricts the powers of the General Committee unduly, and it was my hope that in the Select Committee the powers of the General Committee would be extended to Rs. 25,000. But the Select Committee did not agree, and the figure was retained at Rs. 10,000. The Hon'ble Member now wishes to reduce it to Rs. 5,000.

"I submit that all these attempts to reduce the amounts up to which contracts may be made by the Chairman and the General Committee, respectively, are steps in the wrong direction."

The motion was put and lost.

SECTIONS 87 AND 88.

The Hon'ble BABU JATRA MOHAN SEN also moved that in section 80 (*now* 87), sub-section (2), lines 3 and 4, "five hundred" be substituted for "one thousand".

The motion was put and lost.

The Hon'ble BABU JATRA MOHAN SEN also moved that in section 81 (*now* 88), sub-section (1), line 5, "five hundred" be substituted for "one thousand".

The motion was put and lost.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "(where necessary) instead of the Chairman's seal," in lines 6 and 7 of sub-section (1) of section 80 (*now* 87) be omitted.

He said:—"I cannot understand the object of these words in this section, and therefore I move that they be omitted. I do not see that any provision is made anywhere in the Bill for there being a seal called 'the Chairman's seal'."

The Hon'ble MR. BAKER said:—"It means the Chairman's private seal, the exception being that the seal of the Corporation is used instead of the Chairman's own seal. It means the seal which the Chairman would use as a private individual."

The Hon'ble MR. APCAR said:—"I have an amendment in exactly the same terms. I thought the Corporation is going to become, to use a phrase that the Hon'ble Member has made classic, a 'one man show,' and that the Chairman is to have a seal of his own. There is a definite meaning to the term 'seal of the Corporation,' and, therefore, I think, it is dangerous to use such a term in the Bill as it is proposed to omit."

The Hon'ble MR. HANDLEY said:—"I see no objection to these words being retained. I do not know what has disturbed the equanimity of my hon'ble friends. There may, perhaps, be some redundancy, but every gentleman has a seal of his own which he can use in any contract on which he likes to use it. If the words 'where necessary' are not put here, it may be necessary to put that seal to every contract, otherwise the contract would not be legal."

The Hon'ble MR. BOLTON said:—"The words are superfluous and should clearly be omitted."

The Hon'ble THE PRESIDENT said:—"It would meet the Hon'ble Member's views if the words 'instead of the Chairman's seal' in line 7 are omitted."

The Hon'ble BABU SURENDRANATH BANERJEE proposed that only the words "instead of the Chairman's seal" should be omitted.

The motion to omit the words "instead of the Chairman's seal" was put and carried.

The Hon'ble BABU SURENDRANATH BANERJEE's motion for the amendment of section 80 (*now* 87) having been carried, the Hon'ble MR. APCAR, by leave of the Council, withdrew the motion standing in his name, that in section 80 (*now* 87), sub-section (1), the words "(where necessary) instead of the Chairman's seal" be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the following motions standing in his name:—

- (1) that the words "on behalf of the Corporation" be inserted between the word "Committee" and the word "shall" in line 6 of sub-section (1) of section 81 (*now* 88);
- (2) that the word "Corporation" be substituted for the words "General Committee" in line 1 of sub-section (2) of section 81 (*now* 88), and that the words "subject to the provisions of clauses (dd) and (e) of section 79 [*now* clause (d) of section 86]" in lines 3 and 4 of sub-section (2) of section 81 (*now* 88) be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE moved that after the word "Committee" in line 6 of sub-section (1) of section 81 (*now* 88), the following be inserted:—

"in the case of all contracts exceeding one thousand rupees and not exceeding ten thousand rupees, and the Corporation in the case of all contracts exceeding ten thousand rupees."

The Hon'ble MR. APCAR moved that—

- (1) in section 81 (*now* 88), sub-section (1), after the words "General Committee" the words "on behalf of the Corporation" be inserted;
- (2) in section 81 (*now* 88), sub-section (2), the words "subject to the provisions of clauses (dd) and (e) of section 79 [*now* clause (d) of section 86]" be omitted, and at the end of the sub-section the following be added:—

"Provided that, where the contract involves an expenditure exceeding ten thousand rupees, the action of the General Committee under this section shall be subject to the approval of the Corporation."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I think the Hon'ble Member in charge of the Bill will accept this amendment. Under sub-section (1) of section 81 (*now* 88), the General Committee gives notice by advertisement in respect of all contracts, whether they are within the jurisdiction of the General Committee or of the Corporation. The Corporation will enter into contracts which lie within their jurisdiction. The Hon'ble Member in charge of the Bill may say that the issue of advertisements is not of great importance, but we have found by experience that they are of the greatest possible importance, and therefore the issue of advertisements ought to be given to the authority that will have the making of the contracts. To the General Committee ought to belong the power of issuing advertisements and of accepting tenders in respect of contracts which by law they are empowered to enter into. To the Corporation ought to belong the power of issuing advertisements and accepting tenders in respect of contracts which fall within the jurisdiction of the

Corporation. This is a proposal which I think is perfectly fair and reasonable and ought to be allowed. It falls in with the principle which my hon'ble friend the Member in charge of the Bill has himself laid down. There ought to be no overlapping of functions, and this will be avoided by giving to the Corporation complete authority and responsibility in respect of contracts with which it has to deal, and similarly by giving to the General Committee complete authority and responsibility in respect of contracts within its jurisdiction."

The Hon'ble MR. BAKER said:—"I regret I cannot agree to this amendment. I cannot see that there will be any overlapping of functions. The interests of the Corporation are safeguarded by this section read with sections 79 and 81 (*now* 86 and 88). When a contract is to be entered into, the General Committee will issue advertisements and call for tenders. If the contract is for a sum less than Rs. 10,000, the acceptance of a tender by the General Committee will be final. If it exceeds Rs. 10,000, then the General Committee will have to send the tender which they propose for acceptance, with possibly other tenders, to the Corporation for approval, and the contract cannot be entered into unless and until the Corporation have accepted a tender. That, I submit, is the only way of safeguarding the interests of the Corporation. What would you think of a private Company which passed a rule that contracts above a certain sum shall only be entered into at a general meeting of the shareholders of the Company? The acceptance of contracts is a matter for the Board of Directors of the Company to deal with."

The Hon'ble MR. APCAR said:—"If the Council will refer to my amendment on the same section 81 (*now* 88), sub-section (1), which refers to the same matter as that now under discussion, they will see that I propose a middle course, namely, that, after the words 'General Committee' the words 'on behalf of the Corporation' be inserted. I think it will be better to have the whole discussion at once. It appears to me that whatever is done by the General Committee in such cases should be done on behalf of the Corporation and not in an entirely independent way."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I regret I am not able to follow the Hon'ble Member in charge of the Bill in the line of argument he has adopted. He has emphasised the fact that there are to be co-ordinate authorities and that their powers and functions are to be kept apart. But I find that every now and then those powers and functions get mixed up. There is the General Committee and there is the Corporation, but my hon'ble friend says there must be a mixing up of their functions in the matter of contracts. My hon'ble friend argued as if the General Committee was a sort of working body of the Corporation. I admit that it is so now, but it will not be so when this Bill is passed. He asked what would it be if the shareholders of a Company were called together to open tenders and enter into contracts? That, I submit, is quite a different thing. The General Committee is now the working body of the Corporation, but under this rule it will be a distinct and separate authority. The Corporation will not be able to act for the General Committee, nor will the General Committee be able to act for the Corporation. I submit that there is a positive danger in the General Committee opening tenders and sending them on to the Corporation. The present practice as to the opening of tenders inspires the fullest confidence, because tenders are now opened by a responsible officer under certain safeguards, but it would be dangerous if tenders were opened by a body which has not the final decision, and which has to transmit them to a superior authority. You do not know what malpractices may take place. Tenders may be opened one day and may be forwarded to the Corporation a week after; other tenders might be put in in the meantime. Malpractices are bound to take place if the suggestions of the Hon'ble Member in charge of the Bill are accepted. I speak with knowledge and experience. It is of the utmost importance that the decision with regard to the tenders should be made then and there. The practice now is for the Vice-Chairman to open tenders and keep them under lock and key and bring them before the General Committee, and then they are discussed and disposed of at once. I am perfectly certain that the proposed change

will lead to malpractices. I am anxious that there shall be no malpractices. I accept the principle of separation of duties. My amendment accepts completely the principle of co-ordinate authorities. The General Committee has to deal with certain contracts; they have to issue advertisements; they have to call for tenders; they have to open the tenders and accept the contracts. The Corporation have also to consider certain tenders and accept contracts. There ought to be a complete separation of functions with the result that you will be able to bring home responsibility to the Corporation or to the General Committee, as the case may be. That seems to me to be the logical sequence of the principle laid down, and I cannot understand my hon'ble friend's hesitation to continue to follow his own principle to its legitimate conclusion. It is my firm conviction that if this amendment is rejected and my hon'ble friend's suggestions are accepted, the result will be disastrous."

The Hon'ble MR. BOLTON said:—"The drafting of this section seems to me defective. The sub-section says:—

'The General Committee shall not be bound to accept any tender which may be made in pursuance of such notice, but may accept, subject to the provisions of clauses (dd) and (e) of section 79, any of the tenders so made which appears to them, upon a view of all the circumstances, to be the most advantageous, or may reject all the tenders so made.'

"Nothing is here said of any action which the Corporation is to take. Clauses (dd) and (e) of section 79 [now clauses (d) and (e) of section 86] restrict the action of the General Committee under this section, but they do not empower the Corporation to take up the tenders and deal with them. The Hon'ble Member in charge of the Bill proposes that the Corporation shall dispose of the tenders relating to contracts within their cognisance, but not open them. There is, however, no provision in this section empowering them to deal with any contracts. The omission should be rectified. I also agree that, if the Corporation deals with tenders, it should open them. This is the obvious and ordinary arrangement."

The Hon'ble MR. OLDHAM said:—"I regret that I am unable to follow either the Hon'ble Mr. Bolton or the Hon'ble Babu Surendranath Banerjee. I speak with experience of the manner in which the General Committee deals with these matters. I think my hon'ble friend Mr. Bolton is mistaken in saying that the Corporation has to deal with tenders. The sole power of the Corporation is a sanctioning power. It is only in one way that the Corporation has co-ordinate powers as regards executive duties. It rests entirely in the final control in giving their sanction to the acceptance of tenders. It will be mixing up the powers of the Corporation with those of the General Committee if they are to open tenders, which is an executive duty. I never heard of this misunderstanding until now."

The Hon'ble MR. BOLTON said:—"There is no misunderstanding on my part."

The Hon'ble MR. OLDHAM said:—"I did not understand why my hon'ble friend thinks the Corporation should deal with the tenders. The Corporation has to sanction certain contracts, but it has not to deal with the tenders. Nor do I understand what is the point of danger in the passage of these documents from one body to another. I probably misled my hon'ble friend by saying that the tenders are opened by the General Committee. The Vice-Chairman opens all their tenders, but in the case of another Committee to which I have the honour to belong (the Loans Committee), the tenders, which are for very large sums, are opened by the members of the Committee. But I do not see what danger there can be from the tenders being opened by the General Committee if the acceptance of the tenders receives the sanction of the Corporation. I do not know of any danger."

The Hon'ble MR. BUCKLEY said:—"I have listened with the most utter astonishment to what the hon'ble mover of the amendment said. The procedure, as I understand it, is extremely simple. When the Hon'ble Member first spoke, I thought his objection to the present section was that the Corporation have not the power to order the publication of advertisements in the newspapers; but obviously that is not what the Hon'ble Member means. The

procedure will be this. The advertisement will be issued by the executive authority; then tenders will be received; the tenders will be opened by the General Committee; they will be entered in a general statement or form, as is done in the Public Works Department; then the tenders, together with that statement, will be submitted by the Chairman for the approval of the Corporation if they have to deal with the matter. How they can possibly be tampered with I cannot understand; but, if there is that danger, there must be something very wrong indeed in the proceedings in the office of the municipality. I have never heard of such a thing as any forgery or fabrication connected with the documents in the Public Works Department. I regret I have not been able to follow the Hon'ble Mr. Bolton. I cannot agree with him that this section is defective. It was considered by the Select Committee, and it appears to me to be a most simple matter."

The Hon'ble Mr. BAKER said:—"I can add very little to what I have already said. The procedure will be that tenders will be received in the first instance by the General Committee; they will be opened by the General Committee; the tenders will then be entered in a schedule, and the General Committee will select one for acceptance. If the amount is in excess of Rs. 10,000, the whole matter, including the tenders, will be sent to the Corporation for their approval. That is the answer to what the Hon'ble Mr. Bolton said. It seems to me, as has been pointed out by the Hon'ble Mr. Buckley and the Hon'ble Mr. Oldham, that the section is perfectly clear."

The Hon'ble Mr. BOLTON said:—"The action of the Corporation is limited by the proviso, but there is no provision empowering the Corporation to take up the tenders. There are members of the legal profession here who will be able to give their opinion."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"The Hon'ble Member in charge of the Bill is reading into the section things that are not to be found there. The difficulty in the section is that it deals only with cases in which the General Committee is empowered to deal with tenders, but it makes no mention of tenders with which the Corporation is entitled to deal. It only provides that the General Committee is competent to deal with tenders which come within the scope of their authority. By putting in the words 'subject to the provisions of clauses (d) and (e)' [~~now~~ clauses (d) and (e)] you exclude certain matters from the control of the General Committee, but that does not authorise the Corporation to deal with such matters; and I think the words proposed in the amendment now under consideration ought to be inserted with a view to authorise the Corporation to deal with them."

The Hon'ble Mr. BOLTON said:—"I understand from the Assistant Secretary that he thinks the section wrong if the Corporation is to dispose of tenders relating to contracts within their powers. The Hon'ble Member in charge of the Bill said that the General Committee will select one tender, and then present it to the Corporation with a general statement of the tenders received. It should not rest with the General Committee to select any tender which must go to the Corporation. That would be a work of supererogation, since the Corporation would not be bound by their selection. I would suggest that the consideration of this section be postponed until the next meeting of the Council."

The Hon'ble Mr. APCAR said:—"I fully endorse all that the Hon'ble the Chief Secretary to Government has said. I think the drafting of the section is defective if the intention of the Government is as has been explained by the Hon'ble Member in charge of the Bill, and I would ask my learned friend the Secretary to look also at the proviso that I propose to insert to sub-section (2) of section 81 (~~now~~ 88)."

The Hon'ble Mr. BAKER said:—"I have no objection to the consideration of this section being postponed."

The Hon'ble Mr. BOLTON said :—"I should like the Hon'ble Member in charge of the Bill to explain why he objects to the modification which has been suggested."

The Hon'ble Mr. BAKER said :—"I have explained twice already what I understand to be the intention. The General Committee will issue advertisements, receive tenders, and enter the details of them in a schedule, and will select one tender for acceptance by the Corporation, and, in sending up the tenders, they will send everything connected with the tender. There is no need to put into the Bill all these details. The intention is that the General Committee should open the tenders and consider them."

The Hon'ble Mr. APCAR said :—"It is as if it is intended that the Corporation has only to say 'yes' or 'no', to endorse or to reject. That is what I understand is the effect of what is proposed. I propose to omit the reference to clauses (dd) and (e) [now clauses (d) and (e)], and to introduce a proviso to the effect that, where the contract involves an expenditure exceeding Rs. 10,000, the action of the General Committee under this section shall be subject to the approval of the Corporation. As the section is worded, it will simply give the Corporation power to accept a certain tender or not, without giving them the opportunity of dealing fully with the matter. As the Bill is framed, it means that they will not have any power but to enter into a contract or to refuse to do so. I desire to give the Corporation the power of considering the conditions and the specification and having full responsibility with regard to the whole contract."

The Hon'ble Mr. BUCKLEY said :—"Surely that is meant by sub-section (2) of section 81 (now 88), when it says that the General Committee may accept any of the tenders which appears to them upon a view of all the circumstances to be advantageous, subject to the provisions of clauses (dd) and (e) of section 79 [now clauses (d) and (e) of section 86], which means that they are to send the tenders to the Corporation."

The Hon'ble Mr. BOLTON said :—"Section 79 (now 86) does not provide for sending tenders to the Corporation."

The Hon'ble Mr. APCAR said :—"I hope it will not be understood that I accept what the Hon'ble Mr. Buckley said in his construction of the section."

The further consideration of these amendments was then postponed till the next meeting of the Council.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved that at the end of section 81 (now 88), sub-section (2), the words "for reasons which shall be recorded in their proceedings" be added.

The consideration of this amendment was postponed till the next meeting of the Council.

The Council was adjourned to Saturday, the 16th instant.

CALCUTTA;
The 16th January, 1900.

F. G. WIGLEY,
Assistant Secretary to the Govt. of Bengal,
Legislative Dept.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Monday, the 16th September,
1899.

Present:

The Hon'ble SIR JOHN WOODBURN, K.C.S.I., Lieutenant-Governor of Bengal,
presiding.

The Hon'ble MR. W. B. OLDHAM, C.I.E.

The Hon'ble MR. R. B. BUCKLEY.

The Hon'ble MR. C. W. BOLTON, C.S.I.

The Hon'ble MR. E. N. BAKER.

The Hon'ble RAI DURGA GATI BANERJEE BAHADUR, C.I.E.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. F. F. HANDLEY.

The Hon'ble MR. F. A. SLACK.

The Hon'ble KHAN BAHADUR MAULVI DELAWAR HOSAIN AHMED.

The Hon'ble BABU JATRA MOHAN SEN.

The Hon'ble MR. T. W. SPINK.

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR.

The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH, C.I.E.

The Hon'ble MR. D. F. MACKENZIE.

The Hon'ble MR. J. G. APCAR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.B.A.S., F.R.S.E.

The Hon'ble BABU BOIKANTA NATH SEN.

The Hon'ble BABU SURENDRANATH BANERJEE.

CIVIL COURTS' AMINS BILL.

The Hon'ble MR. BOLTON, in moving that the Bill to repeal the Civil Courts' Amins Act, 1856, in Bengal be taken into consideration at the meeting of the Council to be held on Tuesday, the 19th instant, observed that he desired to add nothing on the present occasion to the remarks made by him when asking leave to introduce the Bill.

The motion was put and agreed to.

THE CALCUTTA MUNICIPAL BILL.

SECTION 25.

The Hon'ble MR. BAKER moved that the following sub-section be added to section 28A (*now 25*), namely:—

"(4) The Vice-Chairman shall not be removed from his office, otherwise than at the end of the term for which he was appointed, except in accordance with a resolution which has been passed at a special meeting and in favour of which not less than two-thirds of the Commissioners present at the meeting have voted."

He said:—"I have been in communication with the Hon'ble Babu Surendranath Banerjee with reference to the terms of amendment No. 12 of the Supplementary List of Business, and he informs me that if I make a slight modification in the terms of the amendment which comes first in the seventh list of business to-day, he will accept it. I have accordingly modified the amendment, which will now run in the terms I have just read.

"The Hon'ble Member accepts that wording, and this will make it unnecessary for him to move his amendment No. 12. His amendment was inconvenient, partly because it assumed that the Vice-Chairman was a municipal officer, which is not the case, and partly because under section 28J, sub-section (6) [*now section 35, sub-section (6)*], it is provided that the Vice-Chairman and Deputy Chairman shall be subject to the same liabilities, restrictions and conditions as the Chairman, and therefore both of these officers are liable to removal in the same way as the Chairman under section 10 (*now 11*) of the Bill. The object of the Hon'ble Member's amendment was to ensure that there should be no change in the present law with respect to the Vice-Chairman. Under the present law the Vice-Chairman cannot be removed by the Local Government at its discretion. He can only be removed on the vote of a two-thirds majority of the Commissioners, or at the end of the time for which he was originally appointed. The effect of the amendment I have now read will be to retain that state of things."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If the effect of the amendment as has been explained is to keep the present law intact, I have much pleasure in accepting it, and I withdraw my amendment."

The motion was put and agreed to.

SECTION 70.

The last motion having been agreed to, the Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the motion standing in his name that the following proviso be added to section 62 (*now 70*):—

"Provided also that in the case of the Vice-Chairman or the Deputy Chairman he shall not be removed except by a resolution of the Corporation in favour of which not less than two-thirds of the Commissioners voting have voted."

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, moved the following amendment standing in the name of the Hon'ble Dr. Asutosh Mukhopadhyaya, namely:—

that to section 62 (*now 70*) the following proviso be added, namely:—

"Provided also that any other municipal officer or servant in receipt of a salary of more than one hundred rupees *per mensem* who is dismissed may appeal to the General Committee, whose decision shall be final."

The sections of the Bill having, under the direction of the Council, been re-numbered, the present number of each section is inserted in brackets wherever the new numbering differs from the old.

The Hon'ble MR. BAKER said:—"I intimated at the last meeting of the Council when the Hon'ble Dr. Asutosh Mukhopadhyaya suggested that the General Committee should hear these appeals that I would be prepared to consider that suggestion. I have done so, and I think the suggestion is a good one. I consulted Mr. Bright, the Chairman of the Corporation, and he told me not only that he agrees with the amendment, but that he welcomes it. He feels that the responsibility of dealing with the dismissal of servants drawing Rs. 100 per month or upwards is too great to be borne by him singly, and he would greatly prefer that an appeal should lie to some higher authority. Therefore I accept the amendment which has been moved by the Hon'ble Raja Bahadur."

The motion was put and agreed to.

The last amendment having been adopted, the Hon'ble RAJA RANAJIT SINHA, BAHADUR, of Nashipur, by leave of the Council, withdrew the motion standing in his name that after the words "Local Government," at the end of section 62 (*now* 70), the following be added:—

"and that in case of the dismissal of other Municipal officers or servants drawing a salary of one hundred rupees or upwards *per mensem* an appeal shall lie to the Corporation."

SECTION 88.

The Hon'ble MR. BAKER moved that for sub-section (2) of section 81 (*now* 88), the following sub-sections be substituted, namely:—

"(2) In every case in which the acceptance of a tender would involve an expenditure exceeding ten thousand rupees, the General Committee shall place before the Corporation the specifications, conditions and estimates, and all the tenders received, specifying the particular tender (if any) which they recommend for acceptance.

"(3) In every case in which the acceptance of a tender would involve an expenditure exceeding one lakh of rupees, the Corporation shall submit to the Local Government the specifications, conditions and estimates, and all the tenders received, specifying the particular tender (if any) which they recommend for acceptance.

"(4) Neither the General Committee, the Corporation nor the Local Government shall be bound to accept any tender which has been made; but any of those authorities may, within the pecuniary limits of their respective powers, as prescribed in section 79, sub-section (1) [*now* section 86, sub-section (2)], accept any of such tenders which appears to it, upon a view of all the circumstances, to be the most advantageous, or may reject all the tenders submitted."

He said:—"This amendment has been framed in communication with the Hon'ble Mr. Apcar. The opinion was expressed on the last occasion the Council met that section 81 (*now* 88) did not make it quite clear that the tenders, including estimates, conditions and specifications, were to be submitted by the General Committee to the Corporation when the amount of the contract exceeded Rs. 10,000. It was thought by some Hon'ble Members that the General Committee would only have to submit the particular tender which they recommended for acceptance. That was not the intention. But, as these doubts have been expressed, it is desirable that the section should be worded so clearly as to prevent any possibility of misunderstanding. With that object, the Secretary has drafted these three clauses to take the place of sub-section (2). This morning since I came into the Council I have had an opportunity of speaking to the Hon'ble Babu Surendranath Banerjee on this point, and he tells me that while he agrees to the alteration I have proposed with regard to specifications and estimates, he feels some doubt about clause (4). He doubts whether the Local Government ought to accept any tender. Well, Sir, I think to put it in a homely way, that what is sauce for the goose is sauce for the gander. If the intention of the two sections 79 and 81 (*now* 86 and 88) is that the sanctioning authority is to receive the tenders, we cannot apply that in the case of the Corporation and refuse it to the Local Government. The position is exactly the same, except that the Corporation can only sanction up to one lakh of rupees, while the Local Government sanctions contracts for sums in excess of that figure. Therefore, I think the procedure should be precisely the same in the two cases."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I am very sorry to raise a note of discord after my hon'ble friend has proceeded so far and has made suggestions which meet us half way. My difficulty is this : as I explained to the Hon'ble Member this morning, the Government is not a municipal authority: the Government is a supervising authority. Matters which have been sanctioned by the Corporation come up before the Government for confirmation, and the Government either confirms those matters or vetoes them. But here under clause (4) my hon'ble friend invests the Government with an active share in regard to municipal contracts. The Government becomes a sort of municipal authority under clause (4). Sir, the present law is that contracts above one lakh of rupees are laid before the Government, and the Government may sanction the contracts or veto them as it pleases. The Corporation sanctions the contracts subject to the approval of the Government. The Government is a supervising authority, and I believe that that was the intention of the framers of this Bill. I think it was their intention that no further power should be given to the Government in regard to the determination of contracts than what the Government now possesses under the Act. But you are now taking a step beyond that. Instead of Government merely vetoing or merely supervising, the Government places itself in the position of an active municipal authority in regard to a particular class of contracts. I do not think this is a position which the Government ought to assume in regard to any municipal matter. I think the position of the Government ought to be the position of the supervising authority. But that position is changed if the Government actively interfere with the ordinary work of the Municipality. Such a modification of the law seems to me to ignore the fundamental principles which underlie the Bill. Therefore, I think it would be as well to modify the section upon these lines. That is my difficulty, and I explained it to my friend; but he is unwilling to proceed further."

The Hon'ble MR. BOLTON said :—"On the last occasion I pointed out the necessity for the change now proposed in this section, because, if the Corporation is to enter upon contracts of a certain value, it is necessary that they should examine the tenders, and also, as has now been added by the Hon'ble Mr. Baker, the specifications, conditions and estimates. For the same reason the Government must examine the tenders, specifications, conditions and estimates of any contract which it lies with it to approve or veto. It is perfectly obvious that the Government, even as the section now stands, could not possibly exercise its power of veto, unless it does so blindly, without examining all the papers upon which the proposal to contract for a sum exceeding a lakh of rupees has been made by the Corporation. These papers must come before it, in order that it may exercise in a reasonable and proper way its control over such contracts."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"It is the acceptance of the tender by the Government that I object to."

The Hon'ble MR. APCAR said :—"In the list of business there is a motion, No. 37*, which stands in my name. That was inserted with a view to giving an opportunity to the Corporation of seeing and considering those very points which now the Hon'ble Member in charge has acceded in his own amendment. Therefore, if the amendment is passed in the form which now the Hon'ble Member's amendment assumes, it will not be necessary for me to move the amendment that I now refer to. I thought it would be advisable to have that proviso which is now incorporated in sub-sections (2), (3) and (4) of the amendment, because the Corporation, having the power to consider these tenders, ought to be in a position also to criticise the conditions, specifications and estimates. Otherwise, the Corporation would be compelled, possibly, to reject tender after tender, because they did not conform with their wishes as to what they might think would be required. So that I think the present amendment is a wise alteration, if I may say so, because it will avoid

* i.e., that in section 81, sub-section (1) [now section 88, sub-section (1)], after the words "General Committee" the words "on behalf of the Corporation" be inserted.

possible friction in the working of this Bill, and, as I understand my hon'ble friend, it really only expresses that which was his intention in regard to this section from the first.

"Then with respect to what has fallen from the Hon'ble Mr. Bolton, I am quite at one with him in thinking that it is advisable that the Government should have the opportunity of giving their assistance to the Corporation in any criticism relating to the specifications and estimates, but where I join issue with the Hon'ble Member is upon the question of the Local Government having the power of accepting tenders. I do not think the Local Government should have this power of accepting tenders. I do not consider that is what should be allowed by law. I do not know if that is the intention, because, as my hon'ble friend to my left (Babu Surendranath Banerjee) has well said, it would constitute the Government a municipal authority, and it would almost be necessary to place it on the list of the various municipal authorities. I do not know if it is really the intention to give that power to the Local Government, so that, after the Corporation have rejected any tender, the Local Government may accept that tender and force it upon the Corporation. I think that is going perhaps beyond what is the intention of the Bill. I am not prepared to say that it is really intended that the Local Government shall thus have the power of setting aside the action of the Corporation who are charged with the power of the purse: but, if it is so, it is obvious that the powers given to the Corporation under the scheme of the Bill will be in a very serious degree encroached upon. They would not have that discretion left to them which it is, as I understand it, the intention of Government to permit them to have. So, if it is the desire now to press this amendment in any form, with the intention of giving authority to the Local Government to upset the resolutions of the Corporation with regard to tenders, I much regret that I must enter my protest against it."

The Hon'ble MR. BUCKLEY said:—"I would only make one brief remark about the words the Hon'ble Mr. Baker brought in this morning. He wishes to have the words 'conditions, specifications and estimates' inserted. I have some doubt whether the word 'estimate' ought to go in there, because under clause (3) the Local Government would have had these estimates before. It does not seem necessary that they should be sent to them a second time with the specifications and conditions. The same thing would apply to the Corporation, and all that seems necessary is that the specifications and conditions should be mentioned, but not the estimates."

The Hon'ble MR. BAKER said:—"Would not the estimates be returned to the General Committee or the Corporation, as the case might be?"

The Hon'ble MR. BUCKLEY said:—"I should have thought that in the case of such large works they would have been kept by the Local Government."

The Hon'ble THE PRESIDENT said:—"They ought undoubtedly to be there."

The Hon'ble MR. BAKER said:—"In the first line of clause (4) of the amendment, in order to meet the views expressed by the Hon'ble Mr. Apcar and the Hon'ble Babu Surendranath Banerjee, it is proposed to substitute the words 'No municipal authority' for the words 'Neither the General Committee, the Corporation nor the Local Government.' That would have the effect of leaving the acceptance to the various municipal authorities (the Chairman does not come in at all), i.e., the General Committee and the Corporation. The Local Government would then merely have the power of vetoing any particular tender which was unsatisfactory."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I thankfully accept that."

The motion was then put in the amended form and agreed to.

The Hon'ble MR. BAKER's amendment in section 81 (*now* 88) having been adopted, the Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the following motions standing in his name:—

(1) that after the words 'General Committee' in line 1 of sub-section (2) of section 81 (*now* 88), the following words be inserted:—'or the Corporation, as the case may be,' and

"(2) that the words 'in the case of the General Committee' be inserted after the words 'may accept' in line 3 of sub-section (2) of the same section."

For the same reason, the Hon'ble MR. APCAR, by leave of the Council, withdrew the following motion standing in his name:—

"that in section 81 (*now* 88), sub-section (2), the words 'subject to the provisions of clauses (d) and (e) of section 79 [*now* clauses (d) and (e) of section 86],' be omitted, and that at the end of the sub-section the following words be added:—

"Provided that, where the contract involves an expenditure exceeding ten thousand rupees, the action of the General Committee under this section shall be subject to the approval of the Corporation."

For the same reason, the Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motion standing in his name:—

"that at the end of section 81 (*now* 88), sub-section (2), the words 'for reasons which shall be recorded in their proceedings' be added."

He said:—"This amendment needs a word of explanation. As I understood section 81, sub-section (2), I thought the General Committee would have the power of disposing of tenders, not only with respect to contracts within their jurisdiction, but also with respect to contracts within the jurisdiction of the Corporation and the Local Government. I thought it was not fair that the General Committee should be in a position arbitrarily to reject all tenders offered to the Corporation or the Local Government. Now, however, according to the amendment which has just been carried, the General Committee will not have that power; my amendment therefore, becomes unnecessary, and I accordingly withdraw it."

For the same reason, the Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the following motion standing in his name:—

"that after the word 'Committee' in line 6 of sub-section (1) of section 81 (*now* 88) the following be inserted:—

"in the case of all contracts exceeding one thousand rupees and not exceeding ten thousand rupees, and the Corporation in the case of all contracts exceeding ten thousand rupees."

The Hon'ble MR. APCAR moved that in section 81 [*now* 88, sub-section (1)] sub-section (1), after the words "General Committee" the words "on behalf of the Corporation" be inserted.

He said:—"With regard to this amendment my aim is that all advertisements that might be published, should be published, in the name of the Corporation which will be the body by whom the contracts will be made. As it now is, whatever the internal arrangement will be, the General Committee will be the body who will decide what form the advertisements shall take. I do not wish, in any way, to take their authority away in a proceeding such as that, but, inasmuch as, after all, the General Committee is acting on behalf of the Corporation in whatever they do, I think that that ought to be made clear, and that in all publications or advertisements it should be stated that they are issued by the General Committee on behalf of the Corporation. I do not think the General Committee should appear to the outer world as an independent body acting independently. That is the purpose of this amendment. It is not intended in any way to hamper the General Committee, or in any way to obstruct the administration, but, inasmuch as contracts are made on behalf of the Corporation, the advertisements calling for tenders ought to be made in somewhat the same form."

through their business at all unless they meet once a week, and I should be surprised if the Chairman does not find it necessary to call other meetings in addition. The whole of the proceedings of the Sub-Committees, which correspond with the existing standing Committees, have to come before the General Committee for confirmation. That is not the case under the present law, for the proceedings of standing Committees go direct to the Corporation for confirmation, and do not come before the General Committee at all. Although the General Committee may be relieved by delegating its powers to these Sub-Committees, this item of confirming their proceedings is a distinct addition to the work which the General Committee now performs. I think, if the Hon'ble Member, Dr. Asutosh Mukhopadhyaya, had ever attended a meeting of the General Committee and seen the enormous volume of business that comes up, he would never have brought up this question. As regards the question of the cost of these meetings, that is, I admit, a drawback, but we shall deal with it when we come to section 93 (*now 100*)."

The motion was then put and lost.

SECTION 93.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 86 (*now 93*):—

"Provided that all resolutions of the General Committee passed at a meeting at which not more than eight members of the said Committee are present shall be subject to confirmation by the Corporation."

He said:—"Sir, in this view of the law I am supported by the Report of the Corporation. I refer to page 7 of the fourth instalment of the Report of the Bill Committee of the Corporation. They say in paragraph 42:—

"The Committee are of opinion that all proceedings of the General Committee should come up for confirmation before the Corporation as under the present law. If this is not agreed to, the Committee would urge that the decisions arrived at by a majority of votes at meetings of the General Committee at which not more than, say, 8 members are present, might be made subject to confirmation by the Corporation. Such decisions might, in some instance, be due to the casting-vote of the Chairman, and could not properly be looked upon as decisions of the General Committee, and should not, therefore, be considered final."

"Sir, this was the view of the Bill Committee consisting of the most experienced Municipal Commissioners. The object is to safeguard the General Committee against what might be considered a snatch vote. Suppose a matter of very considerable importance is brought before the General Committee, and the attendance is only two-thirds of the entire number, and a decision is arrived at, I think it is desirable that, under these circumstances, that that decision should be laid before a higher authority for confirmation. I think it is right and proper that such a decision should be so laid, and the amendment provides for it. It expresses the views of my colleagues who have had the largest experience as Commissioners, and I venture to recommend it for your acceptance."

The Hon'ble MR. BAKER said:—"The Hon'ble Member has said in effect that this amendment is necessary to prevent any matter being settled at a small meeting of the General Committee by the mere casting vote of the Chairman. But I would point out that the Chairman has a casting vote, however many members are present, and the Hon'ble Member's argument would equally apply to every resolution of the General Committee which was decided only by the Chairman's casting vote. It might happen that, if every single member of the General Committee were present, they might be equally divided, and the Chairman would have to give a casting vote. The Hon'ble Member also urged that the amendment is desirable in order to prevent resolutions being carried by a snatch vote, by which I presume he means a vote at a meeting at which very few members were present. But that, Sir, is provided for in section 84 (*now 91*), where a quorum of six is fixed. Unless a quorum is present, no proceedings can be transacted at all. Therefore, I think neither of these arguments has any sort of validity. I would go much further than that. The effect of this amendment is

that, unless nine members of the Committee are present from first to last, the proceedings of the Committee would have no validity unless they are confirmed by the Corporation. Now I could have understood that proposal if the Hon'ble Member's amendment to raise the number of members of the General Committee to eighteen had been carried, although I should have opposed it even in that case. There is something to be said in having at least one-half of the General Committee present before business can be transacted. But the Council has decided against that proposal, and the effect of this amendment is that three-fourths of the whole number of the General Committee must be present before their proceedings have any kind of validity. Now I do not think the Hon'ble Member can quote a single precedent for such a proportion in any similar body in any part of the world. The General Committee is to consist of the best and ablest members of the Corporation; it will be thoroughly representative, and it seems to me to argue a most extraordinary and most uncalled for distrust of the Committee to provide that unless three-fourths of the members are present their proceedings are to have no force."

The Hon'ble MR. BOLTON said:—"It seems to me sufficient to say, in opposing this amendment, that, if it were carried, the General Committee would be shorn of much of the power which it is the express purpose of the Bill to confer upon it, as one of the co-ordinate authorities of the municipality."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I regret I have to say so, but I am wholly opposed to this amendment. To illustrate what its possible consequence may be, I will venture to put one concrete case before the Council. Let us suppose that eight members of the General Committee are present at a meeting. They are absolutely unanimous in the decision of a particular question, and it should be remembered that they form a majority of the entire body. Their proceedings, according to the amendment, will not be final unless they are confirmed by the Corporation. Well, suppose that at the meeting of the Corporation at which these proceedings come up for confirmation twelve members are present, of whom seven vote against the confirmation of the proceedings and five in favour of it. That is only another way of saying that seven members of the Corporation will be able to upset a decision arrived at by eight members of the General Committee. I venture to think that a very exceptional case ought to be made out before we are called upon to accept so startling a result."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I do not wish to reply at any length to the observations which have been made, except to say that my hon'ble friend Dr. Ashutosh Mukhopadhyaya has introduced two assumptions, both of which are not likely to happen. In both cases, upon any contentious matter, the eight members of the General Committee are not likely to be absolutely unanimous; and, although I know that twelve members will form a quorum for the Corporation, I cannot suppose that that will be the usual attendance. I think we may take it for granted that the attendance will considerably exceed twelve. In practical life we deal not with abstract possibilities but with things which are likely to happen, and such assumptions as absolute unanimity in the General Committee and an attendance of only twelve members in the Corporation are things which I can say from my experience of the General Committee and of the Corporation are assumptions which are not in the least likely to be realised. I will not reply to the arguments which have been urged by my hon'ble friend Mr. Baker, but I think my hon'ble friend said that he is prepared to accept this amendment if the number is reduced."

The Hon'ble MR. BAKER said:—"I said I could understand it, but I should oppose it."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I was prepared to reduce the number to six if my hon'ble friend saw his way to accept the principle of the amendment."

The Hon'ble Mr. BAKER said:—"As a matter of substance I think this amendment comes to nothing Sir: it has no meaning. As a matter of form, I think it is not quite correct, because advertisements are called for, not on behalf of the Corporation, but on behalf of the Municipality, which is quite a different matter. The Municipality includes all the Municipal authorities, includes every thing connected with the Municipal government of the town. If the words 'on behalf of the Corporation' were inserted, it would look as if the General Committee, one of the Municipal authorities, were calling for tenders on behalf of one of the other Municipal authorities. In contracts, such wording would not be technically correct. As far as I can judge, the insertion of the words would have no sort of effect, one way or the other, and, therefore, I think they are superfluous."

The Hon'ble Mr. APCAR, in reply, said:—"May I make this observation with regard to the point? All contracts are made on behalf of the Corporation, but, whatever contracts are made, the Chairman and the General Committee are merged in the Corporation so far as liability, or responsibility, or obligation, is concerned; that is my reason in putting this amendment forward."

The motion was then put and lost.

SECTION 90.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved, that in section 83, sub-section (2) [*now* section 90, sub-section (2)], for "once a week" be substituted "twice a month".

He said:—"In the first place, Sir, I have to point out that, if it is obligatory on the General Committee to meet once a week, we make it obligatory on the Corporation to spend Rs. 20,000 a year, because every member of the General Committee who attends a weekly meeting will have to be paid a fee at Rs. 32 for each such attendance. In the second place, I desire to point out that, even if we substitute 'twice a month,' there is ample safeguard that business will not suffer, for the reason that the same sub-section provides that the General Committee may meet at such other times as may be found necessary. Sub-section (4) also provides that the Chairman may at any time call a special meeting of the General Committee for the transaction of any business which, in his opinion, cannot be delayed until the next ordinary meeting of the Committee. In the third place Sir, I have to point out that, having reference to the terms of section 88 (*now* 95), which deals with the appointment of Sub-Committees, to whom the powers of the General Committee may be delegated, it may fairly be expected that the labours of the General Committee will be much lightened; and, lastly, Sir, I desire to point out that, having regard to the composition of the reconstituted Corporation and the reconstituted General Committee, it may be expected that, after the disappearance of what has been described as 'the obnoxious element,' there may be less of speech and more of action."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Notwithstanding the disappearance of 'the obnoxious element' to which some of us belong and to which my hon'ble friend has just referred, I think it will be absolutely necessary to hold the meetings of the General Committee once a week. My hon'ble friend Mr. Oldham will bear me out when I say that, having regard to the enormous increase of work which has taken place within recent times, and especially after the amalgamation, we have been obliged to hold meetings of the General Committee sometimes twice a week instead of once, and it seems to me that it would be useless to lay down as part of the law that meetings should be held only twice in a month and as often as may be necessary. I am afraid it will be found necessary to hold these meetings at least once a week. If my hon'ble friend were a member of the Corporation—and if he were, he would probably have been one of the 'obnoxious element'—he would have been of the opinion that the General Committee must meet once a week. The volume of business is so large that it cannot possibly be dealt with unless the Committee meets once a week."

The Hon'ble THE PRESIDENT said:—"Where did the Hon'ble Member find the words 'obnoxious element'? I have no recollection of seeing these words anywhere."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I have seen them in several of the newspapers."

The Hon'ble MR. OLDHAM said:—"My friend has appealed to me, and under ordinary circumstances I would have been in agreement with him; but recent events have somewhat shaken my views. Last evening we had a meeting of the General Committee of the Corporation which was attended by the Hon'ble Babu Durga Gati Banerjee and some others and also myself. There was a formidable list of business on the agenda paper, some 40 items, including one of those personal matters which always take up so much time, and it is a fact that we cleared off the whole business within one hour. A fortnight ago I should certainly have been in the fullest agreement with my hon'ble friend, but after last evening I do not know what to say. It is also a fact that the Port Commissioners meet only once a fortnight, and their meetings are very short. But then I must acknowledge that the variety of business which comes before the General Committee of the Corporation is very much greater than that which comes before the Port Commissioners."

The Hon'ble MR. APCAR said:—"Sir, my experience has been that some little time back there were lists of some 30 to 40 items got through in an afternoon sitting. Then I was a more regular attendant than, owing to pressure of other work, I have been able to be recently. I was not present when the General Committee met last evening, but it seems to me, that the Hon'ble Mr. Oldham has himself suggested an exceedingly strong argument in support, though he seems rather doubtful if he would accede to what my hon'ble friend on my left has said. He stated that not less than 40 items of business were brought up. Well, are the General Committee not to take into consideration such an accumulation of business? No less than 40 items were brought forward at this one meeting. Now, if these had all come up within one week—"

The Hon'ble MR. OLDHAM said:—"Some of these items had been accumulating for much more than one week."

The Hon'ble MR. APCAR said:—"Of course, we cannot go into an account of what had accumulated or what had not, but we have to take into consideration this, that under the provisions of this Bill, the General Committee have the power to transfer, practically, all their business to the Chairman. That is an element which must be taken into consideration, and it may tend to diminish business very considerably. And there is also the further element which my hon'ble friend, Dr. Asutosh Mukhopadhyaya, has brought up, that is, the payment of fees, which is a very serious item of expenditure. But, in all circumstances, I think it would be inadvisable that the Committee should meet less frequently than once a week. My experience is that their business is such that it will require some attention to be paid to it at least once a week. Therefore, I cannot agree with the amendment which has been brought forward. As to the rapidity with which the work is got through, that, of course, depends on the interest or want of interest, and on the knowledge or want of knowledge, of the members of the Committee present. I am quite prepared to find that under the new *regime* business will be got through very rapidly. But whether this will be to the advantage of the rate-payers has yet to be seen. I have been present at meetings when the help of the elected Commissioners has been given to the Chairman and the discussions have been prolonged; but the discussions have always been on the side of, and in the interest of, the rate-payers and of the public, and I do not think that the time which has thus been given should be grudged."

The Hon'ble MR. BAKER said:—"I am entirely opposed to this amendment, Sir, and I entirely agree with the Hon'ble Babu Surendranath Banerjee. It seems to me to be out of the question, that the General Committee will ever get

The Hon'ble MR. BAKER said:—"Under no circumstances whatever can Government agree to allow the proceedings of the General Committee to go to the Corporation for confirmation."

The motion was then put and lost.

SECTION 95.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 88 (*now* 95), sub-section (1), the words "delegate any of their powers or duties to Sub-Committees, and may also from time to time by like resolution" and the word "such" in line 5 be omitted.

He said:—"My reason for proposing this amendment is that the words which I have mentioned seem to me to be unnecessary in view of the provision of sub-section (11) [*now* (12)] of this section. Sub-section (11) [*now* (12)] says that 'all proceedings of any Sub-Committee shall be subject to confirmation by the General Committee.' As I understand it, even if certain powers or duties are, under this Bill, delegated to any Sub-Committee, the decision of the Sub-Committee upon such a matter will have to be placed before the General Committee for confirmation. Therefore, the same object will be attained if we only leave in the words 'refer to Sub-Committees for enquiry and report or for opinion.' If the intention had been to delegate powers and duties absolutely, that is to say, if the Sub-Committees had been authorised to assume certain powers and to perform certain duties not subject to the control of the General Committee, it would have been desirable to have these words, but, when everything really remains in the hands of the General Committee, I think they may be safely omitted."

The Hon'ble MR. BAKER said:—"The Hon'ble Member's argument is that the power of delegation given in the sub-section is superfluous, because the General Committee has the power to submit questions to Sub-Committees for enquiry, report and opinion, and the Sub-Committees' reports have to be confirmed by the General Committee. The Hon'ble Member considered mere confirmation of the proceedings to be sufficient without the power of delegation; but I think, Sir, there is a great practical difference. Under the Bill as it stands, the Sub-Committees will actually exercise the powers of the General Committee in everything except name. They will actually do whatever work is made over to them by the General Committee; they will discharge functions which are imposed by the Bill on the General Committee, and their proceedings will go to the General Committee merely for confirmation. Now it is well known that, when work is done by a Sub-Committee, about 95 per cent. of the proceedings are confirmed without discussion. The delegation of powers in this way practically relieves the delegating body of a very large mass of work which would otherwise devolve upon it. Moreover, if the Hon'ble Member will refer to an amendment, of which I have given notice, he will see that it is proposed, following the provisions of the existing law, to give to the Executive power to anticipate the sanction of the General Committee. Now, Sir, if matters were only referred to Sub-Committees for enquiry, report or opinion, I do not think the Chairman would be able to exercise these powers; he could not take action in anticipation of the confirmation of the proceedings."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I most support the amendment and for reasons different from those which have been urged by my hon'ble friend. The reasons of my hon'ble friend are those of a lawyer; my reasons are those of a practical man. I object to the delegation of powers and duties to small bodies. Specific matters should, I think, be referred to them, but powers as powers, and duties as duties, I do not think should be delegated to small bodies, of which the maximum number of members is six and the minimum three. When you delegate a distinct power or a specific duty, you know what you are delegating, and then there is the further safeguard that the matter comes before the General Committee for confirmation. I feel doubtful as to the wisdom and expediency of delegating powers and duties

in the manner contemplated in this sub-section, as I consider that such delegation may be attended with risk, and I do not think it ought to be allowed. I therefore support the amendment."

The Hon'ble MR. BUCKLEY said :—"To my mind to strike out the words which the Hon'ble Dr. Asutosh Mukhopadhyaya would exclude from this section would be to take out one of the most advantageous proposals in the Bill. I cannot agree at all with what the Hon'ble Babu Surendranath Banerjee has said, that the delegation to small Sub-Committees is in itself bad. I will give an example in which I think even he will admit it would be advantageous. In dealing with *bustees*, one of the most important and difficult duties of the Corporation, nothing is more desirable than that the Ward Commissioner should help, with his knowledge of the circumstances, in deciding any matter. Now, under the terms of the Bill with reference to *bustees*, there are 22 duties assigned to the General Committee, and I think nearly all of them are essentially duties which can be much better performed by a *Bustee* Committee, and probably by a local *Bustee* Committee. I hope the *Bustee* Committees will deal with the different portions of the town separately. I think it advantageous that the Committees should so deal with them. One of their duties is 'to require an owner to take down a hut and re-erect it in conformity with the standard plan;' another is 'to cause the materials of any hut pulled down under their orders to be given to the rightful owner.' It seems to me clearly advantageous that the Sub-Committees should deal with such matters as these. The difference between the present Act and this Bill is most plainly marked. Under the existing Act the General Committee under section 64 is only a Budget and Finance Committee, and can only deal with business expressly referred to it by the Corporation. This is not so, however, in fact, but it is the existing law. The Sub-Committees under the present Act can only enquire and report and advise. They have no administrative functions delegated to them. Under this Bill, any of the duties and powers of the General Committee can be assigned to Sub-Committees, and they may become most useful bodies, relieving the General Committee of much detailed work."

The Hon'ble MR. BAKER said :—"When I spoke just now, I confined myself entirely to the grounds on which the hon'ble mover of the amendment supported it. But the grounds put forward by the Hon'ble Babu Surendranath Banerjee are different. His proposal would bring the work of the Corporation to a standstill. The volume of work before the General Committee is so enormous as to prevent them ever getting through it unless they have recourse to the principle of division of labour. These Sub-Committees, among other duties, will take the place of the present Standing Committees. All their proceedings will come before the General Committee for confirmation, and will have the same effect as if they had been done by the General Committee in their own persons. The other day the Hon'ble Dr. Asutosh Mukhopadhyaya moved an amendment to prevent the Chairman from delegating his powers to any Municipal officer, except a few specified ones, and after hearing what I had to say about it, at the recommendation of the Hon'ble Babu Surendranath Banerjee, he withdrew that amendment. Well, Sir, the position here is exactly the same. Just as the Chairman could not possibly get through his work if he had to do everything with his own hands, so the General Committee would be unable to get through the work imposed upon them if they had to transact every item of business themselves. Throughout the proceedings of the Select Committee it was taken for granted that not only would these Sub-Committees be appointed, but that the freest possible use would be made of this power. I think, Sir, if the Hon'ble mover of the amendment had served on the Corporation, he would recognise how utterly impossible it is to impose on the General Committee all the duties the General Committee at present have imposed upon them, and also the work of the numerous Standing Committees of the Corporation."

The Hon'ble MR. OLDHAM said :—"I have very little to add to what my Hon'ble friend the member in charge of the Bill has said in reply to the Hon'ble Babu Surendranath Banerjee. I would remind the Hon'ble Babu Surendranath

Banerjee that the Loans Committee, which is entrusted with very large financial questions, and the realising of the capital of the Corporation, consists only of six members, and I do not think I have ever seen more than four members at a meeting. Then again it should be remembered that these Committees, which will take up so much of the work of the present Standing Committees of the Corporation, will be very often peripatetic. They will go about and inspect various parts of the town. It is, I think, quite impossible in practice for the existing large Committees to carry out inspection work of that nature."

The motion was then put and lost.

The Hon'ble Mr. APCAR moved that sub-section (3b) of section 88 [now section 95, sub-section (6)] be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that sub-section (3b) of section 88 [now section 95, sub-section (6)] be omitted.

The Hon'ble Mr. APCAR said:—"Sir, I move that section 88, sub-section (3b) [now section 95, sub-section (6)], be omitted. I am entirely in favour of having the best men we can get for any work that has to be done, when all causes of friction are removed. I think that the Corporation, or even the General Committee, will be best able to find persons better fitted for any particular kind of work, without being hampered by any rules which would limit the selections in proportion to the Ward Commissioners, the nominated Commissioners, and those appointed by Government. There has never been a suggestion made that the Municipality packed their Committees. I think they have tried to get the best men they could, and I think it would be difficult for Government to make rules to meet the different cases—hard-and-fast rules—such as are contemplated under the law. I think it will be much better and wiser that there should be no such rules, and that those who have to select should have a free choice of whom they may think the best fitted for any particular purpose in hand."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have an amendment very much upon the same lines, Sir. This proviso in the Bill has been drafted in accordance with the recommendation of the Government of India. Paragraph 20 of the letter of the Government of India says:—

'I am also to suggest that it might be desirable to lay down rules for the appointment of the Special Committees and Sub-Committees which would secure their being truly representative, in respect of their constituent elements, of the Corporation or General Committee appointing them. The provisions regarding the making of rules and bye-laws for the conduct of the business of Special Committees and Sub-Committees under sections 89A and 89B, in connection with sections 595 and 597, might be extended to include their constitution in general agreement with the principles already laid down. It might not be necessary or feasible for all such Special Committees and Sub-Committees to be homogenous in constitution with the body appointing them; but it is clear that in some cases at least such homogeneity alone would secure efficiency and obviate friction.'

"Well, Sir, it was in accordance with this recommendation that the Select Committee drafted the section. But the Select Committee were unanimously of opinion that it would be most difficult to work a section of this kind. I will read an extract from the report of the Select Committee with reference to this particular section. The Select Committee observed:—

'At the same time we are bound to say that we entertain considerable doubt as to whether it will be possible to make workable rules of this character, or to give practical effect to any rules that might be made on the subject, however well they may be devised. It is even possible that such rules might impair the working efficiency of Committees appointed under them.'

"Therefore, Sir, when these rules were made, it was the deliberate opinion of the Select Committee that the rules might impair the working efficiency of the Committees appointed under them. This is the unanimous view of the Select Committee. With all the respect we can possibly feel for the Government of India, I think we ought to state, in clear and distinct terms,

that the effect of a section like this, if carried out, would be disastrous to the working efficiency of the Corporation, for that is practically what the Select Committee said in much milder language. It seems to me to be positively dangerous to have a section like this in the Bill. We have to provide for future contingencies. The history of this section will be forgotten. The circumstances under which it became the law of the land will not be borne in mind. My hon'ble friend will not always be the Secretary of the Municipal Department—another Lieutenant-Governor will occupy the place Your Honour now adorns—and then rules may be framed which, I have not the slightest hesitation in saying, will be disastrous to the efficiency of the Corporation. Having regard to these considerations, is it right that we should have even a permissive section like this in the Bill? We are bound to look to the efficiency of the Corporation. I think we owe it to ourselves to state, in clear and distinct terms, that we as the Legislature feel that even this permissive power of making rules ought not to be given to the Government in a matter like this. Therefore I appeal to Your Honour and to this Council to omit the sub-section. I know perfectly well that it will be a dead letter under Your Honour's *régime*, but it may not be so under your successor's *régime*, and, therefore, it is necessary that we should guard against possible contingencies which might lead to mischief. I hope that, as in legislating we are bound to take long views of things, we shall so provide that no mischief may happen in the future by allowing a section like this to be passed into law. I trust the amendment of my hon'ble friend will be accepted."

The Hon'ble MR. BAKER said:—"I wish to say very little about this sub-section, because my views are accurately stated in the passage of the report of the Select Committee which has been read by the Hon'ble Babu Surendranath Banerjee. But I think Sir, he has rather exaggerated the risk of disaster following from this section being allowed in the Bill. So far as I can see, it will be quite impossible ever to make rules of this kind, and I am sure, at all events as far as I can foresee, no such rules will be made. The section is permissive. If the section had been compulsory, I admit the position would be one of great difficulty. But after all, it is merely a permissive section in the Bill, and a section which I think every one is agreed is extremely difficult of application, and every one is also agreed that it is not likely to be put into practice. I do not think we need trouble very much about any dangers that are likely to ensue on its being put into operation. Therefore, although I cannot say I am in favour of the section, I think we might allow it to stand in the Bill."

The Hon'ble Mr. APCAR, in reply, said:—"What I desire to point out is that, if this section is so difficult of application, it would be wiser to take it out altogether, because, although my hon'ble friend says there will be no chance of its being put into operation, he, after all, can only speak for himself, and we do not know what the future has in store for the Corporation. Considering also that he recognises the great difficulty of putting it into operation, I think it is best to remove all temptation and to exclude this sub-section altogether from the Bill."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"My hon'ble friend said it will be quite impossible to frame rules; then why have the section at all? My friend has distinctly said it is quite impossible to frame rules under this section of the Bill."

The Hon'ble Mr. BAKER said:—"Did I say 'quite impossible'?"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have got your exact words."

The Hon'ble Mr. BAKER said:—"I said my views were expressed in the paragraph of the Select Committee's report."

The motions being put, the Council divided as follows:—

Ayes 9.

Noes 10.

The Hon'ble Raja Ranajit Sinha, Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.
The Hon'ble the President.

So the amendment was lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 88, sub-section (8b), [now section 95, sub-section (6)] for lines 3 to 8, the following be substituted:—

- (i) Commissioners elected under section 7 (now 8), sub-section (1), or appointed under section 52B (now 59), sub-section (1), and
- (ii) Commissioners appointed under section 7, sub-section (1a) [now section 8, sub-section (2)].

He said:—"My reason for this amendment is that, to the best of my judgment, the section as framed does not correctly represent the views of the Government of India, as embodied in paragraphs 17 and 20 of the despatch dated 7th June, 1899. The question arises, what are the constituent elements of the General Committee who have to appoint Sub-Committees? It is assumed that these constituent elements are the Ward Commissioners, the Commissioners appointed under clauses (a), (b) and (c) of sub-section (1a) of section 7 [now sub-section (2) of section 8] and the Commissioners appointed under clause (d) of sub-section (1a) of section 7 [now sub-section (2) of section 8]. Now I venture to submit that these are not the constituent elements either of the Corporation or of the General Committee. So far as the Corporation goes, the constituent elements are described in paragraph 17 of the despatch. They are described to be the twenty-five elected Commissioners and the twenty-five appointed Commissioners. So far as the General Committee is concerned, my contention is that the constituent elements are (1) the four representatives of the Ward Commissioners; (2) not the four representatives of the Commissioners appointed under clauses (a), (b) and (c), but the four who represent the Commissioners appointed under clauses (a), (b), (c) and (d), that is to say, these four represent not only Trade, Commerce and the Port Trust, but they also represent the Government partially; and (3) the four members appointed by Government. Therefore, it is not correct to say that the rules are to be made declaring what proportion has to come from the Ward Commissioners, the Commissioners appointed under clauses (a), (b) and (c) of sub-section (1a) of section 7 [now sub-section (2) of section 8], and the Commissioners appointed under clause (d) of sub-section (1a) of section 7 [now sub-section (2) of section 8]. I submit, therefore, that (2) and (3) ought to be amalgamated.

The Hon'ble MR. BAKER said:—"The Hon'ble Member admits that the proportions of these Sub-Committees ought to be truly representative of the constituent elements of the Corporation. Now, Sir, the constitution of the General Committee is laid down in section 8 (now 9) of the Bill, and that says that the 12 members shall be respectively elected and appointed as follows:—

four shall be elected by the Ward Commissioners,
four shall be elected by the Commissioners appointed under clauses
(a), (b), (c) and (d) of section 7 (now 8),
four shall be appointed by the Local Government.

"Now, Sir, we have followed that classification in clause (3b)."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"That is precisely my complaint. You have not done so."

The Hon'ble MR. BAKER said:—"I would ask that this matter stand over until Monday. I am not quite sure that there is not some confusion about it."

The further consideration of these amendments was then postponed to the next meeting of the Council.

The consideration of the following motion standing in the name of the Hon'ble DR. ASUTOSH MUKHOPADHYAYA, namely, that at the end of section 88, sub-section (36) [now section 95, sub-section (6)], be added "but from no Sub-Committee shall the representatives of either of the two classes of Commissioners be entirely excluded," was also postponed to the next meeting of the Council.

The Hon'ble MR. APCAR moved that in section 88, sub-section (3a) [now section 95, sub-section (5)], line 2, for the words "General Committee," the word "Corporation" be substituted, and that the words from "and none of them need" to the end of the sub-section be omitted.

He said:—"Sir, we have, under this section, power given to the General Committee to decide what Sub-Committees there shall be and what subjects they shall deal with, and what I seek to bring about by my amendment is, that the Corporation should elect the members of such Sub-Committees, and not the General Committee. I think, Sir, that the general body of the Corporation will be better able to judge as to the qualifications of individuals than the General Committee, which is a small body in which there will be many who are not by any means in touch with the Commissioners as a body. There is a further difficulty in the question, which I think is a real difficulty, and that is, that the members of the Sub-Committees will be paid by fees, and they may be influenced by reason of those who may be regarded as being the patrons in giving those fees, and I do not like that there should be any suspicion of that sort. Whether there be reason for this or not, I am not going to enter into the question, but we know this, that although in Bombay the powers of election of these Sub-Committees are given to the Standing Committee, which answers to our General Committee, the Sub-Committees are not paid at all. These are generally the grounds on which I move that the word 'Corporation' be substituted for the term 'General Committee'."

The Hon'ble MR. BAKER said:—"This proposal seeks to transfer to the Corporation the power to appoint Sub-Committees to whom are to be delegated part of the duties of the General Committee. The Hon'ble Member has said that the Corporation is better able to judge of the merits of members to be appointed than is the General Committee. He said the General Committee was a small body and that the Corporation is better acquainted with the merits of the members who may be appointed to Sub-Committees. This sounds, Sir, as if the members of the General Committee were entire strangers to the Corporation, as if they knew nothing about their fellow Commissioners at all. But every member of the General Committee is also a member of the Corporation. I would remind the Hon'ble Member that in the House of Commons they have an institution known as the Committee of Selection, which is a Committee to which is entrusted the duty of selecting members of other Committees to be appointed by the House. Now, Sir, if we were going to have such an institution in the Corporation of Calcutta, I think you would find it very difficult to get a body of men better qualified to act as the Committee of Selection than the General Committee. It will be representative of all sections of the Corporation; it will include, as I have said more than once, the picked men of all classes—men of the highest character and position and of the greatest capacity; and I feel certain that, if the matter is looked at solely from the point of view of making the best possible selection, the General Committee is in the best position to do it."

"But there are still stronger objections to the amendment. These Sub-Committees are to be the delegates of the General Committee. They are to do work assigned by law to the General Committee, and their proceedings come before the parent body for confirmation; and it is quite inconsistent with this scheme of duties to transfer the power of appointing them to some third party. If this were done, Sub-Committees would at once become the agents of the Corporation instead of being, as they are intended to be, the agents of the General Committee. The Corporation would thus obtain the power of interfering with the work of the General Committee in matters with which under the Bill they have no power of interference. It would go a long way towards bringing back that interference by means of Committees which Sir Alexander Mackenzie was so strongly opposed to."

The Hon'ble Mr. APCAR, in reply, said:—"With reference to what has fallen from the Hon'ble Member in charge of the Bill as to the Committee of the House of Commons, I would observe that it is not the Cabinet Ministers who form the Selection Committee of the House, but those who are most intimately connected with, and those who have the most intimate knowledge of, the ordinary members of the House of Commons. So I think that in the General Committee, although these may be, as my hon'ble friend hopes, the pick of the Corporation, it is very possible that among them a large proportion will be those who will be wholly ignorant of the general body of the members generally, and will be unacquainted with a very large portion of the general body among whom would probably be found the most useful persons to serve on these Sub-Committees. With regard to the question of the selection being made by the Corporation, as I have said before,—and it has not been challenged in any degree whatever,—there has been no suggestion that the Corporation packed their Committees. I think that, if the Corporation were permitted to have the selection of these Committees, there would be a better selection made than if the choice were left to the General Committee."

The motion was then put and lost.

The Hon'ble BABU BOIKANTA NATH SEN moved that in section 88, sub-section (3a) [now section 95, sub-section (5)], the word "shall" be substituted for 'need, unless the General Committee so direct'

He said:—"I expect support for this amendment from the Hon'ble Members who have, in this Council, affirmed more than once that local self-government is not being withdrawn, that concentration is not the object of this Bill, but that it is designed with the object simply of curtailing some of the powers at present enjoyed by the preponderating element. These observations encourage me to expect support from that quarter. This section, Sir, enables the General Committee to appoint members of the Sub-Committees from the general body of Commissioners, but it does not prevent the General Committee from nominating Sub-Committees from its own body. Where is the guarantee that the General Committee will not invariably exercise that discretion in favour of its own members? Where is the safeguard? Now, Sir, Mr. Risley in his Statement of Objects and Reasons, paragraph 3, stated:—

'Power is also taken for the General Committee to appoint Sub-Committees, either from their own body or from the general body of Commissioners, on which all the working talent among the Commissioners will find a place.'

"I beg to draw the special attention of the Council to this observation 'on which all the working talent among the Commissioners will find a place.' I understand it was the intention also of the Select Committee that these Sub-Committees be formed from the general body of the Commissioners. If that is really the intention of the legislature from the time of the inception of this Bill down to this stage, why not give a manifestation of that intention by accepting this amendment? Now I beg to submit that there is undoubtedly a good deal of feeling about this Bill. I need not repeat what the state of excitement is, but if Your Honour is pleased to accept this amendment it would, I believe, be dealing out a considerable concession which would pacify public feelings. I have just

heard that the General Committee will be overwhelmed with work, that they ought to be relieved, and therefore, if the working talent of the general body of the Commissioners is intended to be utilized, why not give them this assurance that the Sub-Committees would be always formed from the rest of the Commissioners? If this be done, the public, at any rate the native portion of it, would be, to a certain extent, relieved by the concession. It would be acceding to a certain extent to public wishes without in the least introducing anything which would weaken the executive. I submit, therefore, that this is an opportunity for this Council, and it is an opportunity afforded by this amendment to Your Honour, to make a concession which will, to a certain extent, pacify the excitement caused by the Bill."

The Hon'ble MR. BAKER said :—"The Hon'ble Member says that this proposal, if agreed to, will be regarded as a concession, and that it would go some way towards satisfying the demands of the public. Would the Hon'ble Member be surprised to hear that not a single one of any of the various associations or public bodies who have reported upon this Bill has put forward any such request? The effect of the amendment would be to exclude every member of the General Committee from sitting on any of the Sub-Committees. As I have explained, these Sub-Committees will take the place of the present Standing Committees for water-supply, drainage, bustees, &c., &c. Does the Hon'ble Member seriously think that no member of the General Committee ought to sit upon any one of these important Committees? I feel that no member of the Corporation would ever put forward such an extraordinary proposition. At present, the members of the General Committee are to be found on every one of the Standing Committees, and, as a rule, they are among the leading members of the Standing Committees."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"Some of us do not allow ourselves to be put down as members of the Standing Committees."

The Hon'ble MR. BAKER said :—"I can hardly consider the proposal seriously: it would exclude the picked men of the Corporation from these various Sub-Committees."

The Hon'ble MR. BUCKLEY said :—"The Hon'ble Babu Boikanta Nath Sen thinks that this proposal would not weaken the action of Sub-Committees. To my mind it would be almost fatal. He wishes to have some assurance that the members of the Corporation will have a chance of being members of the various Sub-Committees. I think he may feel the most perfect assurance that this will be the case. Under the London County Council, there are no less than 25 Committees which correspond to the Sub-Committees here, and I have little doubt there should be at least an equal number in Calcutta. If the 12 members of the General Committee are to form 25 Sub-Committees, I am quite sure that they will have to give up all occupations other than that of the municipality. It will be a physical impossibility for members of the General Committee to form all the Sub-Committees. I am myself personally in favour of as large a number as possible of the members of the Sub-Committees not being members of the General Committee, but I do think it is most desirable and, in the principal Sub-Committees, absolutely essential that there should be one member of the General Committee at least who is a member of the Sub-Committee. If the system which is proposed in section 88 (now 95) of the Bill is carried out, the result will be this, that on each Sub-Committee there will be three or four members who are Commissioners and one or possibly two members of the General Committee, and one member of the General Committee will, in almost all cases, be the Chairman of the Sub-Committee. The Sub-Committee will deal with the various matters assigned to it, and, when its proceedings come before the General Committee, the Chairman of the Sub-Committee will be the spokesman of the Sub-Committee before the General Committee. That system is in force in several municipalities, and it is most successful, because in all unimportant matters the views of the Chairman of the Sub-Committee, who is a member of the General Committee, are accepted as a matter of etiquette by the General Committee; but of course when important matters come up

for consideration, then the members of the General Committee will discuss the question. It is certain that by having one member of the General Committee as Chairman of the Sub-Committee, and by letting him bring matters before the General Committee, business is greatly facilitated. I am in sympathy with the Hon'ble Member in hoping that as large a number of members of the Corporation as possible may be on the Sub-Committee, and I am sure that, if their powers are somewhat weakened as members of the Corporation generally, they will be considerably increased with reference to those details of which they have the most knowledge and the most local acquaintance."

The Hon'ble MR. BOLTON said:—"The Hon'ble Member has quoted, in support of his amendment, a remark of Mr. Risley's that it was desirable that all the talent of the Commissioners should be utilised on the Sub-Committees; but in proposing that the members of these Sub-Committees shall consist only of members of the Corporation, and not of the General Committee, he excludes from the Sub-Committees all the working talent that will exist in the General Committee, which, as we have been assured, will be comprised of the most practical and business-like members of the municipality. The Hon'ble Member also apprehends that no members of the Corporation who are not also members of the General Committee would be appointed to the Sub-Committees. The General Committee, being a small body, consisting of 12, must, however, obviously have recourse to the other members of the Corporation in order to form most of their Sub-Committees. If, on the other hand, the Sub-Committees consist only of members of the Corporation who are not on the General Committee, while their proceedings are made subject to the confirmation of the General Committee, it is probable that friction would sometimes arise between the General Committee and its Sub-Committees. The section as drafted unquestionably provides the best means of using all the talent of the Corporation in the work of the municipality, and the Corporation will have, through its members, some share in dealing with the matters which are reserved for the General Committee."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The point which has been raised by my hon'ble friend Babu Boikanto Nath Sen is one of considerable importance, and I must say it is a point attended with considerable difficulty. The Council cannot possibly withhold its sympathy from a motion such as that brought forward by my hon'ble friend, having regard to the object which he has in view, namely, to guard against the possibility of the General Committee abusing its powers of nomination in respect of Sub-Committees. I take it, Sir, that that is an object which will command in an unstinted measure the sympathy of this Council, but the Hon'ble Member in charge of the Bill has pointed out there are serious practical difficulties in the way, and I think it is as well that we should address ourselves to those difficulties. It is possible that a Sub-Committee, left without the experienced and matured guidance of members of the General Committee, may not be able satisfactorily to discharge the important and responsible duties with which it may be entrusted. I know how valuable the guidance—the guidance of the more seasoned, more experienced and more matured minds in the Corporation—is. Therefore, I should be unwilling to lay down a hard-and-fast rule to the effect that no member of the General Committee shall be a member of the Sub-Committee. Having gone so far I would stop there, and I would say this—that a limitation ought to be imposed upon the percentage of members of the General Committee being members of the Sub-Committees. Supposing you have one or two members of the General Committee, that ought to be enough. The minimum is three, the maximum is six. Supposing you have two members of the General Committee—if you provide two members of the General Committee upon any Sub-Committee—it may be less—but supposing you have two members of the General Committee upon every Sub-Committee, I think that ought to be quite enough for the satisfactory transaction of business. You will have the experienced guidance of the members of the General Committee, and it seems to me that such a limitation will afford an opportunity to others who are not members of the General Committee to be

members of the Sub-Committees. Then, Sir, there is another alternative suggestion which also occurs to me, because it was a suggestion which was made by experienced members of the Corporation, and if I remember right it was a suggestion which was given effect to at one time. I think, Sir, we had a rule to this effect that no member of the Corporation shall be a member of the General Committee and of more than one or two Sub-Committees. The effect of that rule would be to divide the work of the Corporation amongst all the members of the Corporation and give an opportunity to others who are not members of the General Committee to take part in the work of the Sub-Committees. These are the two alternative proposals which occur to my mind; and, as it is a matter of some little difficulty, I was going to make a suggestion to the Hon'ble Member in charge of the Bill whether he would consent to consider them, because they are matters of practical expediency and administrative convenience, and whether it would not be as well to have the question postponed and we might take it up after tiffin and settle it, that is to say, if the Hon'ble Member in charge of the Bill accepts the principle. If, however, he does not, then there is an end of the matter."

The Hon'ble MR. BAKER said:—"I certainly do not accept the principle that there should be any limitation whatever as to proportion on the Sub-Committees."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Then I have no hesitation in saying, and I say it with regret, that my hon'ble friend takes an extreme view, and I think he takes a view which is opposed to what is right and proper in a case of this kind. What possible objection can my friend have to legislate to the effect that not more than one-third of the Sub-Committee shall be members of the General Committee? I do not see any possible objection to a section of that kind, because we should thus secure the experience and judgment of members of the General Committee to guide the Sub-Committees. What possible objection can there be to the suggestion which I venture to put forward, namely, that no member of the Corporation shall be a member of the General Committee and of more than one Sub-Committee? I think these are limitations which would not in the smallest degree interfere with the satisfactory transaction of business in the Corporation, and at the same time guard against the possibility of any abuse which my hon'ble friend Babu Boikanta Nath Sen is so anxious to provide against and with which I am sure the Council will sympathise. I must say that the Hon'ble Member in charge of the Bill takes an extreme view, and I hope he will modify the opinion he has formed."

The Hon'ble BABU BOIKANTA NATH SEN, in reply, said:—"I can see the difficulty that in some cases may arise owing to the exclusion of members of the General Committee from the Sub-Committees. At the same time I still venture to think that there is a possibility of the abuse of the discretion left to the General Committee. My hon'ble friend Babu Surendranath Banerjee's suggestion was that a maximum number might be provided. If it had been accepted by the Hon'ble Member in charge of the Bill, perhaps it would have satisfied me also, but his opposition to that accentuates the necessity of a safeguard. Having regard to the tendency of the present legislation and the propensities of the administration, I believe I am justified in asking for a safeguard. It is, Sir, a safeguard that I ask for and nothing else. Where is the guarantee that the General Committee will not hereafter exclude all the other members and will not appropriate all the privileges? I seek for a safeguard in order that there may not be a monopoly of privileges derived from the work in the Municipality. Let there be a diffusion and a distribution with proper safeguards. As has been observed by the Hon'ble Mr. Buckley, one member from the General Committee might preside over the deliberations of the Sub-Committee. Perhaps that would be a good thing. I repeat that what I seek is that there should be a safeguard."

The motion was then put and lost.

The Hon'ble MR. APOOR, by leave of the Council, withdrew the motions standing in his name, that—

- (1) in section 88, sub-sections (4) and (5) [now section 85, sub-sections (7) and (8)], for the words "General Committee" the word "Corporation" be substituted;
- (2) in section 88, sub-section (5) [now section 95, sub-section (8)], the words "and of any rules made under sub-section (3b)" [now sub-section (6)] be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the proviso to sub-section (5a) of section 88 [now sub-section (9) of section 95] be omitted.

He said:—"Sub-section (5a) of section 88 [now sub-section (9) of section 95] is as follows:—

'Every Sub-Committee shall choose one of their number to preside at their meetings:

'Provided that the Chairman shall be President of any Sub-Committee of which he is a member.'

"I wish to remind Hon'ble Members of the history of this particular proviso. At one of the meetings of the Select Committee we came to the conclusion that the Sub-Committees should have the power of electing their own President, no matter whether the Chairman was present or not. I think, Sir, we arrived at this conclusion, and subsequently we modified it, and the modification finds a place in the Bill. I am in favour of the original amendment of the Select Committee, namely, that Sub-Committees ought to be permitted to elect their own President, and the Chairman ought not *ex officio* to be the President of a Sub-Committee if he happens to be present or be a member of the Sub-Committee. There is no reason why he should necessarily be the President. If he is present, he is able to give all the information which the Sub-Committee might stand in need of; and, although he might not occupy the Presidential chair, he would be in a position to guide, lead and direct the proceedings of the Sub-Committee. I think, Sir, the Sub-Committees might, without the slightest detriment to the prestige of the authority of the Chairman, be permitted to elect their own President. I do not see why any modification of the original decision of the Select Committee should be made. I hope, therefore, that this amendment might be accepted."

The Hon'ble MR. BAKER said:—"This is a case in which second thoughts are best. I would only say that it seems to me absolutely inconsistent with the position of the Chairman that he should be a member of a Sub-Committee with somebody else in the chair. And I would add that there is hardly any part in this Bill about which Mr. Bright takes a stronger view."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Am I to understand that we are to be determined in the course of legislation that we follow here by the strong opinions of Mr. Bright or the Municipal executive? No doubt those strong opinions are factors for consideration, but I venture to submit that they are not determining factors in the course of legislation that we should adopt here. We are not to be guided in the discharge of our duties except by our own consciences and what we arrive at after mature consideration. It is perfectly legitimate for Mr. Bright to object to a thing of this kind. Being Chairman, he certainly would like to be Chairman of the General Committee and of Sub-Committees. He would not of course consent to any change the effect of which would be to place him in an inferior position than that of Chairman even of meetings of Sub-Committees."

The Hon'ble THE PRESIDENT said:—"The Hon'ble Member in charge of the Bill mentioned Mr. Bright's name in support of his own particular view, but the Council will give due weight to the remarks of the Hon'ble Mover of the amendment."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"Mr. Bright's opinion no doubt is a factor to be taken into account, but it is not to be the determining factor, as apparently it is with my hon'ble friend in charge of the Bill. I may mention just one Committee, and I think the facts connected with that Committee will convince the Council how Committees and Sub-Committees do admirable work when they are left to themselves and not in any way controlled by the Municipal executive. I would refer to the Bill Committee."

The Hon'ble MR. BAKER said :—"The Chairman was not a member of that Committee. It is only in cases of those Committees of which he is a member that he is to be Chairman."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I wanted to show that members of the Corporation and members of Committees are able to get on without the guidance of the Chairman, and I wanted to show this by reference to the Bill Committee. Here was the Bill Committee charged with most important work, namely, the consideration of the Calcutta Municipal Bill. All the meetings of the Bill Committee, with one exception, were presided over by Babu Kally Nath Mitter. I attended every meeting, and I venture to assert that I do not remember any Committee of the Corporation which has done such admirable work in connection with a difficult question as this Bill Committee has done, unfettered, uncontrolled and without the guidance of the executive. Therefore, it seems to me that the members of the Corporation are able to take care of themselves, and do the work of Committees and Sub-Committees. Therefore, when a Sub-Committee is appointed, there is no reason why the Sub-Committee should not elect its own Chairman. My friend the Hon'ble Mr. Apear reminds me of another Committee, namely, the Suburban Road Committee."

The Hon'ble MR. BAKER said :—"I rise to order. The Hon'ble Member is now replying to what I said just now, and he seems to me to be travelling outside the recognized limits of a reply."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I am illustrating a point, in regard to which Your Honour has permitted me to bring forward one illustration. If I was in order in bringing forward one illustration, surely I am in order in bringing forward another."

The Hon'ble THE PRESIDENT said :—"The Hon'ble Member in charge of the Bill will have a right of reply."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"Here was another Committee, also a non-official Committee, charged with most difficult work connected with the Suburban roads, and I understand the work done by that Committee, without the guidance of the Chairman, was most satisfactory, and its recommendations are now being carried out. Therefore, my contention is this: that the members of the Corporation, of the General Committees and of Sub-Committees are able to look after themselves. If the Chairman is there, let him appear as an ordinary member. If the Sub-Committee propose to elect him as President, by all means let them do so. I do not want to interfere with their discretion, but do not make it obligatory upon them to elect him as President."

The Hon'ble MR. BAKER said :—"The Hon'ble Babu Surendranath Banerjee has quoted one or two instances quite correctly to show that a Committee of the Corporation is capable of doing good work even though they are not under the guidance of the Chairman. But I think he will not find a single instance in which the Chairman has been a member of a Committee and has not been in the chair. In all the instances which he has cited the Chairman has not been a member of the Committee at all. That is exactly what the Bill provides for. Section 88, sub-section (3) [now section 95, sub-section (4)], provides that—

'Every Sub-Committee shall consist of not less than three or more than six Commissioners, and the General Committee may at any time direct that the Chairman shall also be a member of any Sub-Committee.'

"The Chairman need not be a member of any Sub Committee. There is nothing to make him a member of any Sub-Committee unless the General Committee so directs. So that it will still be possible under this Bill, just as it has been in the past, to appoint Committees of which the Chairman is not a member. All that the section we are now discussing provides for is that, if the Chairman is a member of any Sub-Committee, he is to be in his proper place, that is, in the chair."

The motion being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Ranajit Sinha, Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that the following amendments be made in section 88 (*now 95*), namely:—

(1) that the following sub-section be inserted after sub-section (1):—

"(1a) In every case in which an appeal lies to the General Committee from any proceedings of the Chairman, such appeal shall be heard and decided by a Sub-Committee constituted under sub-section (1)."

(2) that the following words be added at the end of sub-section (3) [*now (4)*]:—

"other than a Sub-Committee referred to in sub-section (1a)."

He said:—"Sub-section (3) [*now (4)*] as amended will read:—

"(3) Every Sub Committee shall consist of not less than three or more than six Commissioners, and the General Committee may at any time direct that the Chairman shall also be a member of any Sub-Committee other than a Sub-Committee referred to in sub-section (1a)."

"It is not necessary for me to explain this amendment at any very great length. It will be in the recollection of the Council that when we were discussing section 8 (*now 9*), the Hon'ble Babu Surendranath Banerjee moved that the Chairman should not be *ex officio* President of the General Committee, and two reasons were assigned in support of this amendment: first, that the Chairman as the head of the executive ought not to be the head of the General Committee; and, secondly, that, as appeals from his decision lie to the General Committee, he ought not to be President of that Committee. I suggested that, so far as this second ground went, it could be met by providing that appeals should be heard by the General Committee, such power of hearing appeals being delegated to a Sub-Committee of which the Chairman should not be a member. The Hon'ble Member in charge of the Bill assured me that that was the intention of the Government. I wish it to be distinctly understood that these amendments are not put before the Council from any want of confidence in the assurance given by the Hon'ble Member in charge of the Bill; but it may well happen that years after when the Hon'ble Member is no longer in charge of the Municipal Department of the Government, and the proceedings of this Council have been consigned to oblivion, some enthusiastic admirer of the Chairman may suggest that he should be a member of the

Appeals Committee, and the General Committee may accept the proposition in entire ignorance of the history of the reason why his name was excluded. To guard against any such contingency, I have thought it proper to move this amendment, and I trust it will be accepted."

The Hon'ble MR. BAKER said:—"I accept this amendment."

The motion was put and agreed to.

The Hon'ble MR. BAKER moved that the following proviso be added to section 88, sub-section (11) [now section 95, sub-section (12)], namely:—

"Provided that, if the Chairman concurs in any action recommended by a majority of the members of any Sub-Committee, whether or not he is a member of such Sub-Committee, and considers that inconvenience would result from delay in taking such action, he may take such action without waiting for confirmation by the General Committee of the proceedings of the Sub-Committee; but, if the General Committee do not confirm the proceedings of the Sub-Committee, such steps shall be taken to carry out any orders passed by the General Committee as may still be practicable."

He said:—"The provisions of this amendment correspond with those of sections 64 and 66 of the present Act. They empower the Chairman, when he is in accord with the majority of any Sub-Committee and when he thinks that inconvenience would be occasioned by delay, to take action at once in accordance with the opinion of the majority, without waiting for confirmation by the General Committee. As I say, these powers have been exercised by the Chairman under the existing law for the last ten years, and they have worked well, and I have never heard of their being objected to. It was only by an oversight that similar powers were not inserted in the Bill in the first instance, and we propose now to supply that omission"

The Hon'ble MR. APCAR said:—"We are now gradually coming back to the present Act. The object of this Bill was that the powers of the several municipal authorities should be defined. We are now getting gradually to undefine them. These amendments really are precisely those objections in the present Act which we have heard of before, in consequence of which we were told that the duties of the Chairman were in a fluid state. As I have read the Bill, and the grounds upon which the Bill has been brought in, and the objects of it, this power was deliberately excluded from it. Now we have it, suddenly, that this power is to be given to the Chairman, whether he is present at the discussion or not, whether he has been able to consider the questions in the light of the discussions that have taken place or not, if he happens to agree with one or two members of one of these Sub-Committees, he may at once take action. When there is this power given under the present Act, at all events we had the assurance that the questions would come before a comparatively large number of Commissioners. Now we may possibly have three members attending; we then should have by a majority of two a question of great moment decided, action taken, and then when action has begun to be taken or has been completed, we know what the result will be when it is placed before the General Committee. The General Committee will consider that they are precluded from opening the question again, and they will endorse everything that may have been done. But, under the present law, we have 12 and 18 members who are members of the Committee. They meet together and consider the questions together. The Chairman is always present, and he hears the discussions and is able to consider the questions in the light of the discussions that have taken place; but under the proposed law, this omnipotent and omniscient individual is able simply to do as he thinks fit. We do not know even that there will be a report of the proceedings placed before him; but because he thinks one side is right he immediately can take action. We are told it is for the purpose of preventing any delay in the administration, but we know that matters of any important character can be taken up without delay if the Chairman chooses. We have to provide for all contingencies, and it may be that, when he thinks that there is some question in which the General Committee will not accede to his desire, he will take action, and then the whole question would be practically decided. I think, Sir, that this is a provision which ought

not to find a place in the law. The General Committee meet once a week. These powers have been given in the present Act because the meetings of the Corporation take place once a month under the law. Latterly there have been more meetings than just the monthly meeting, but a very short time back there was just that one meeting in a month, and in such circumstances it was very desirable that the Chairman should have authority to take action promptly; but now these circumstances are altered, and the confirming authority will meet at least once a week; and in these circumstances, I think, to give power to the Chairman to act in such wide terms is really taking away the substance of self-government altogether."

The Hon'ble BARU SURENDRANATH BANERJEE said:—"I must also oppose the amendment. My hon'ble friend in charge of the Bill has proceeded upon the analogy of the present law. I do not think he is entitled to fall back upon the present law. The present law and the law that is to be are two different things altogether. The great drawback in the present law was alleged to be that the Executive was not sufficiently strong; that the Corporation had the power of interference to a very considerable extent which stood in the way of prompt and vigorous action on the part of the Executive. All that is now proposed to be changed; the Executive will be rendered strong, far stronger than they are at present, and I strongly object to the further strengthening of the Executive by these side issues. It is somewhat remarkable that the Hon'ble Member in charge of the Bill did not submit this and a similar section to the Select Committee. Am I to understand that these sections did not occur to my hon'ble friend? If these matters had been brought up in Select Committee, we should have had an opportunity of considering them, and, what is more, I think, when deliberate attempts of this kind are made to strengthen the Executive still further, the opinion of the Corporation and the local bodies ought to have been solicited. This is not a small matter. The section involves a constitutional principle of some moment. The Executive is already strong; you want to strengthen it still further by falling back upon a provision which exists in the present law; but, Sir, my hon'ble friend the Member in charge of the Bill is not to have even the consolation of deriving any support from the present law. The circumstances under which the Chairman can now act in anticipation of confirmation by the Corporation will not be the circumstances under which he will act under the present Bill. Sir, as has been pointed out, the General Committee consists of the *elite* of the Corporation. Will the Sub-Committees be similarly constituted? The Standing Committees consist of a considerable number of members. But the Sub-Committees will comprise very few members. Here the Chairman is to act in anticipation of confirmation by the General Committee if he is in agreement about any matter with the majority of the Sub-Committee. The Sub-Committee will consist of not less than three members and not more than six members. Suppose, Sir, we have a Sub-Committee of five members, and the Chairman is one of the five: three are in favour of a particular course of action, including the Chairman, two are opposed to that particular course of action; the Sub-Committee are thus equally divided; it is the casting vote of the Chairman that decides the matter. Suppose in a case of this kind the Chairman acts in anticipation of sanction by the General Committee. What does it come to? If you analyse the matter it comes to this: that the Chairman acts upon his own independent responsibility in which he has been supported by only two members of the Committee, and he is able to pledge the General Committee to any particular course of action. I think, Sir, that is dangerous and may lead to complications. At the present moment a thing of this kind is impossible because of the numerical strength of the Committees. It seems to me, Sir, if you look at the matter from the point of view which I have ventured to suggest, it is not a safe thing to arm the Executive with powers of this nature. Having regard to the small numerical strength of your Sub-Committee it may sometimes happen that the Chairman may anticipate the decision of the General Committee in a matter in which practically there have been only two or three votes recorded on his side. I do not think that ought to be allowed, and looking at the question from this point of view, I hope and trust that the

Hon'ble Member in charge of the Bill will see his way not to press this amendment."

The Hon'ble BABU BOIKANTA NATH SEN said :—"I would only beg to add one remark in opposing this motion. The necessity for this provision consists in the anticipated inconvenience which would result from delay. As the General Committee meet weekly, and oftener if necessary, they would be able to take action on a Resolution being passed."

The Hon'ble BABU JATRA MOHAN SEN said :—"I wish to make one observation in connection with this matter in opposing this motion. If we refer to section 83 (*now* 90), sub-section (4), we find it provided that—

'The Chairman may at any time call a special meeting of the General Committee for the transaction of any business which, in his opinion, cannot be delayed until the next ordinary meeting of the Committee.'

"If the Chairman thinks that the matter is so urgent, it lies in his power to at once call a meeting of the General Committee. In the face of this section I do not think we ought to lend ourselves to anomalies which may arise in cases where the Chairman takes action in anticipation of the sanction of the General Committee which may not be given afterwards. When we have such a remedy in the hands of the Chairman himself, may not we as well omit this proviso?"

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—"I feel that I ought not to give a silent vote on this question. The proviso, although it looks very similar to the provisions of the old law, upon close examination seems to be completely different in essence. In the first place, under the old law the Committee was the Committee of the Corporation, which was a Committee not invested with vague general powers but a Committee appointed for the purpose of enquiring into, and reporting upon, specific questions. The Sub-Committee we have to deal with in the present instance is a Sub-Committee of the General Committee as distinguished from the Committee appointed by the Corporation. In the second place, this Sub-Committee may have delegated to it vague general powers, and the recommendation which the majority may make may relate to any question whatsoever. Then, again, my hon'ble friend Babu Surendranath Banerjee placed before the Council the case of a Sub-Committee of five, of which the Chairman was President. I would venture to take an even stronger case. There may be a Sub-Committee of three, the Chairman President, one member voting with the Chairman and the other dissentient, and it would be open to the Chairman to take action under the new section 88, sub-section (11) [*now* section 95, sub-section (12)]. Therefore, I venture to affirm, that no case has been made out for the insertion of this section; at any rate, I would venture to suggest that, if this section is to be inserted, for the words 'by a majority of the members of any Sub-Committee' ought to be substituted 'unanimously by a Sub-Committee;' that is to say, if the Chairman concurred in any action recommended unanimously by a Sub-Committee, and if there was urgency, we might take it that the decision of such Sub-Committee would be little liable to be set aside by the General Committee; but to make it possible for the Chairman to take action, in anticipation, upon a recommendation made by a bare majority of a Sub-Committee is, I think, really objectionable."

The Hon'ble MR. BAKER, in reply, said :—"I think, Sir, the objections that have been raised to this exceedingly necessary and harmless proposal—for I can assure the Hon'ble Members that it is so—are based on some misapprehension. They entirely overlook the fact that the Chairman is only to take action in anticipation of the confirmation by the General Committee when he thinks that inconvenience would result from delay. Now, Sir, as the Hon'ble Babu Boikanta Nath Sen pointed out, the General Committee meets once a week; therefore, it can only be in cases where the urgency is so great that it would be impossible to wait for a week that any action will be taken under this section at all. That being so, the only occasion on which it will be necessary to exercise these powers is when the urgency is so great that he cannot wait for a week. All

these prognostications of evil, and all that has been said about the Chairman acting on the opinion and with the concurrence of one single member, appear to be fanciful. I do not regard the smallness of the numbers of the Sub-Committees as in any way a mark of weakness. We know very well that it has been constantly said that the excessive numbers of the present Standing Committees are a source of weakness rather than of strength. The whole object of this provision is to prevent inconvenience to the public. These very provisions have been in force for ten years, and I have never heard one word of complaint made about them. They will be used in the future with the same discretion and the same good sense on the part of the Chairman as in the past, and I hope the Council will accept them."

The motion was then put and agreed to.

SECTION 96.

The Hon'ble BABU SURENDRANATH BANERJEE moved that all the words of sub-section (1) of section 89A (*now* 96) beginning with the words "(to be specified in such resolution)" in line 4 to the end of the sub-section, be omitted, and that in their place the following be substituted:—

"relating to the purposes of this Act, as the Corporation may think fit."

He said:—"I will best consult the convenience of the Council if I read the section as amended by me. The section will run thus:—

'The Corporation may from time to time, by specific resolution, appoint a Special Committee to enquire into and report upon any matter relating to the purposes of the Act as the Corporation may think fit.'

"The provision in the Bill is to this effect:—

'The Corporation may from time to time, by specific resolution, appoint a Special Committee to inquire into, and report upon, any matter (to be specified in such resolution) which is reserved by this Act for the decision of the Corporation, and which is not at the time being under consideration by a Sub-Committee constituted under section 88 (*now* 95).'

"In this matter I follow section 38 of the Bombay Act, which gives the Corporation the right of appointing Committees to enquire into and report upon, any matter connected with the municipal administration of Bombay. Section 38 of the Bombay Act is as follows:—

'The Corporation may, from time to time, appoint out of their own body such and so many Committees, consisting of such number of persons, and may refer to such Committees, for enquiry and report or for opinion, such special subjects relating to the purposes of this Act, as they shall think fit.'

"The object is merely enquiry and report, and I do think the Corporation ought to have the power of enquiry and report in regard to all matters connected with the municipal administration of Calcutta. There might have been some danger of friction formerly when two-thirds of the representatives were elected by the people and one-third consisted of nominated members; but those elements of friction have apparently been removed in the present Bill under the orders of the Government of India. Therefore, there is not the smallest possibility of anything like friction occurring between the Corporation, the General Committee and the various Committees. The ends of harmonious and smooth administration having been ensured by the orders of the Government of India, it seems to me that there ought to be no objection to the enactment of the provision which I have the honour to suggest for your acceptance. We follow the lines of the Bombay Act in this matter. The section of the Bombay Act has not been attended with any inconvenience. If it were attended with any inconvenience, I have not the slightest doubt it would have been amended; and, therefore, having regard to the fact that the Corporation is differently constituted now, from what it was when the Select Committee reported in April, and that we have such a provision in the Bombay Act, it seems to me that the Corporation should have the power which I propose to confer on it."

The Hon'ble MR. BAKER said:—"The Hon'ble Mr. Apcar has a motion to the same effect—No. 54. It would be convenient to take them together."

The Hon'ble Mr. APCAR moved (amendment No. 54) that in section 89A (now 96), sub-section (1), for the words from "which is reserved by this Act" to the end of the sub-section, the words "relating to the purposes of this Act" be substituted.

He said:—"My amendment is practically to the same effect, but it does not go so far as that of my hon'ble friend Babu Surendranath Banerjee. I merely ask that the words 'which is reserved by this Act' to the end of the sub-section be eliminated, and the words 'relating to the purposes of this Act' be substituted. My hon'ble friend goes a little further, and requires that the Corporation may, from time to time, by specific resolution, appoint a Special Committee to enquire into, and report upon, any matter relating to the purposes of this Act as the Corporation may think fit. My hon'ble friend has said that, if in Bombay this had been found to work disadvantageously, it would have been modified; but, as a matter of fact, this has been introduced in the last Act of Bombay. The previous Act, which was amended by the Act of 1888, did not include this provision, and it was because they felt the want of it that they introduced it in the Act that is now in force. And it has been found to be a very useful power. I ask this to be considered: that it cannot be suggested that there can be any harm done in the administration at all, no obstruction whatsoever, because there cannot be any action taken as the result of any Committee of this character; and we know that in Bombay nearly all the great works have been introduced in consequence of the consideration by such Special Committees as are here referred to. As the Bill at present stands, it permits only of Committees being formed with relation to those few questions which are reserved for the consideration of the Corporation. All that I seek is that an opportunity be at least given to them, if they think necessary, of a discussion with regard to other works, and, as a matter of fact, we know from practice it has resulted in good in Bombay. There is no such restriction in the Bombay Act as is contained in the Bill; and, so far as this particular section is concerned, the concession that has been made is of little practical value. So that, in all circumstances, I would ask that there should be a greater power given for discussion by Committees by the Corporation. It would not be in General Meetings where long discussions take place, and where, it might be suggested perhaps, there would be time wasted. Whatever work would be required to be done would be done in Committees to which any specific questions could be referred. I will give one instance of an important work being brought about by reason of a Committee, such as is contemplated here, if the power that I seek now to introduce in this section is given. The Tansa Water-works were, I am informed, due to action taken of this character, and when we find it is a matter which, if introduced, will not in any way interfere with the administration, and will be entirely for the good of the public, I cannot conceive why there should be any objection raised."

The Hon'ble Mr. BAKER said:—"In order that the real bearings of this amendment may be made clear, I will ask the Council to go back a little and to consider what the structure of the new constitution of Calcutta is, and the bearing of the amendment upon it. The central idea of the scheme is to appoint three co-ordinate municipal authorities—the Chairman, the General Committee and the Corporation; and to divide up between them the manifold powers, functions and duties which are enumerated in the Bill. Each of these three authorities is to be independent within its own sphere, and neither of them is to interfere with the others except where it is so expressly provided.

"The functions of these respective authorities are as follows. To the Chairman is assigned the executive duty of carrying the law into effect; to the General Committee is assigned the management of those details which involve the exercise of discretionary power, and which are too important to be left to the Chairman alone; lastly, to the Corporation are assigned the power of the purse, the power of legislation, and the power to settle and shape broad questions of policy and large schemes of improvement. That, Sir, is the ruling idea of the Bill.

"Now, let us consider how it bears on the subject-matter of these two amendments. As regards the General Committee, we know that the duties which devolve upon them are exceedingly numerous and exceedingly intricate, and for that reason we have given them power to appoint Sub-Committees from their own number and otherwise, and to delegate to them a large part of their duties. That power is absolutely essential, and, as I have said, it is necessary that it should be freely exercised. Without this power, the General Committee will be absolutely swamped with work. But when we come to look at the Corporation, the position is different. The duties of the Corporation which I have just described are such as can be performed by a large deliberative body. They are not executive; they are not appellate or judicial; and they contain little or nothing in the way of administrative detail. Therefore, it seems to me, Sir, that there is little or no necessity for the Corporation to appoint subsidiary Committees or to depute or delegate to Committees any part of its own duties. and I think it would be almost inconsistent with the scheme of the Bill that they should do so. But there are one or two functions of the Corporation to which that description does not fully apply. In the course of the Select Committee we provided, among other things, that the control of markets should be withdrawn from the General Committee and made over to the Corporation. That was done rather against my will, but, any way, it was carried. Then the Corporation has to consider the budget, and it is possible that they might find it convenient to consider the budget in the first instance, not in their whole body, but by means of a Special Committee. Similarly, they may also find it convenient to exercise their control over markets in the same way. I think the case of loans also is another instance of the same kind.

"To provide for cases of this kind we, in the Select Committee, inserted this section, 89A (now 96), which gives the Corporation power to appoint Special Committees to consider and report on any matter which is reserved by law for the decision of the Corporation, and, if necessary, to delegate their own powers to such Special Committees.

"I submit that this gives ample power to the Corporation to deal with all those functions of theirs which are not such as can be most conveniently and appropriately dealt with by the Corporation as a whole. The hon'ble movers of the amendments wish to go much further than this. They wish to empower the Corporation to appoint Committees on any and every subject, whether the subjects are in any way under the control of the Corporation or not. The obvious effect of that would be to give the Corporation power to interfere in every branch and detail of the municipal administration. The section already gives the Corporation full power to deal, by means of subsidiary Committees, with all matters which are subject to their control. It is neither necessary, nor right, nor wise to extend that power to matters which are not subject to their control.

"It is true, as the Hon'ble Mr. Apar said, that they did not claim the power to pass any orders on the reports of their Special Committees; but we all know what that means. You appoint your Committee; it makes its enquiry and submits its report. The report comes before the Corporation, and is discussed at great length, and strong opinions are expressed and probably a vote taken. In everything except name, that is tantamount to a direct order to the executive or to some other co-ordinate authority to take certain action; and at all events, even if you do not regard it as an order, it implies criticism, and criticism of matters which, *ex hypothesi*, are outside the province of the Corporation. I think, Sir, if we allow this amendment to be carried, we shall destroy at a stroke the whole separation and division of functions which it is the main object of the Bill to establish."

The Hon'ble RAJA RANAJIT SINHA, BAHADUR, of Nashipur, said:—"I cannot understand what was the intention of the framer of the Bill in inserting this clause 'which is not at the time being under consideration by a Sub-Committee constituted under section 88' when the matter is reserved for decision under the Act by the Corporation. Cannot it be considered by a Sub-Committee appointed by the General Committee?"

The Hon'ble MR. BAKER said:—"Yes, it can. Many matters are first dealt with by the General Committee and go finally to the Corporation for decision."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"The gist of my hon'ble friend's reply is summed up in the concluding sentence of his observations. That sentence I will quote:—

'If we accept the amendment we shall destroy at a stroke the whole organization of the Bill and the system of co-ordinate authorities.'

"I venture to join issue with my hon'ble friend as regards this view of the matter. I think, Sir, we are indebted for the system of co-ordinate authorities to the Bombay Municipal Act. Ours is a derived system. We have borrowed what light we possess on the subject from Bombay. They have got the system of co-ordinate authorities there, and, despite such a system in Bombay, they have got the section which I have just read out—a section which empowers the Corporation to appoint Committees to enquire into and report on all matters relating to the municipal administration of the city. A section such as this does not in the smallest degree jeopardize or impair the system of co-ordinate authorities in Bombay. We have got, then, in Bombay the law which I invite this Council to apply to Calcutta. We have got this law in Bombay, we have got the system of co-ordinate authorities standing side by side with this law and flourishing side by side. This law does not militate against the principle of co-ordinate authorities in Bombay. Why should it militate against the principle of co-ordinate authorities in Calcutta? Nay, more, I go a step further, and I will say this—that it is this principle which has been the saving principle of the Bombay municipal system. It is this principle which has given to the Bombay Corporation the power of criticism, the power of enquiry extending over the entire domain of municipal administration, with the result that the Executive is subject partly at least to that responsibility to which it is essential the Executive should be subject, in order that it might be successful in its work. If the Bombay system has been successful, it is because the Executive is made partly responsible to the Corporation by the section which I invite the Council to accept. If you do not embody the provision which I recommend in the law, you relieve the Executive altogether of that sense of responsibility to which under the operation of this section the Executive would be subject, in relation to the Corporation. Therefore, I think it is most important for the very success of the experiment which you are about to try that we should have a section like this which would enable the Corporation not to interfere, because, as far as active interference is concerned, my amendment does not in any way contemplate it, but will confer on it the right to criticise, the right to enquire into and report. It will enable the Corporation to educate public opinion and bring to bear the wholesome moral pressure of a healthy public opinion upon the action of the Executive. What can the public know as to the business of the Municipal Executive? What can the newspapers possibly know about the doings of the Executive? If a Committee were appointed, that Committee would report; if that report was considered by the Corporation, and if the Corporation recorded a resolution with regard to it, the public would be furnished with information, upon the basis of which they could form their opinions upon the action of the Executive. Therefore, Sir, this section enables the Bombay Government and the Bombay public to exercise the salutary influence of that healthy public opinion without which no Executive, be it the highest in the land, can satisfactorily discharge its responsible duties. I speak with some feeling about this matter, because I am anxious for the success of the experiment which you are about to try. I do not want that the Corporation should in any way impair the efficiency or vigour of executive action; but I do want that the Corporation should exercise a healthy moral influence over the Executive. I do want that the public should be able to exercise the influence of a healthy opinion upon the Executive; and, unless you arm the Corporation with the power of enquiry, the power of investigation and report, you deprive the public of those resources which would enable them to form a healthy and sound opinion. I think these are considerations which ought to weigh with the Council. Not the smallest desire have we to interfere with the Executive. We do not want that the Corporation should ask them to do this or that or interfere with them in any way. The everyday work of the Executive will go on as usual, but the Corporation will be able, by the enquiries which they will set on foot, to elicit important facts in regard to which they

may record resolutions, and this will help the public and the Government to form a sound opinion with regard to the proceedings of the Executive. I cannot understand why the Hon'ble Member in charge of the Bill should stand in the way of a useful provision like this. It does not weaken the Executive; it does not weaken the Committees; it does not weaken the Corporation. The work of the Corporation will go on as usual, but the Executive will be brought under that sense of responsibility, that deference to public opinion, which in these civilised times and in civilised countries constitutes the greatest safeguard of sound, efficient and righteous administration."

The Hon'ble MR. APCAR, in reply, said:—"It has been suggested that I disavow any intention of interference with the Executive. I go much further than that. I distinctly desire to show that there is absolutely no interference with the Executive, and it is not with the idea in any way of interfering with the administration at all that I seek for the powers which would be given under the amendment that I propose. It seems to me that the Hon'ble Member in charge of the Bill does not want any help or advice from the Corporation, and he goes so far as to resent any criticism by the Corporation. Well, if this is the scheme of administration, I am afraid it is doomed to failure. Are the Corporation not to be allowed, in any way or shape, to criticise what has been done? Everything is to be done in the dark without any opportunity whatsoever of expressing their views with regard to any matter at all, whether they have the power to interfere or not. Here we have got a proposal that I now am seeking to introduce into this Bill, which has been introduced into the law in Bombay after experience had taught them that it was required, and we know from the working of the Corporation in Bombay that it has been of the greatest use and practical benefit, by reason of the many suggestions that have been the outcome of the enquiries: nevertheless, there is the most uncompromising opposition offered by the Hon'ble Member in charge. I have given an illustration of the great Tansa Water-works in Bombay which were the result of the deliberations of a Committee appointed under similar powers as those which I seek to give to the Corporation."

The Hon'ble MR. BAKER said:—"A large scheme of water-works is one of the matters reserved by law for decision by the Corporation."

The Hon'ble MR. APCAR said:—"That would be with reference to expenditure that has to be incurred: but whether it would be advisable in any way to introduce these water-works (and there may be many other kinds of work), would be, I take it, for the consideration of a Committee such as I refer to. We are told the General Committee will be swamped with work; they want to have an opportunity of calmly considering the questions which the Corporation desires to dispose of, and here we have an utterly harmless, inoffensive power, the proposal of which is resented, although it may be, as I have shown by illustration, of benefit to the public. I am sorry to find that the Bill is to be pushed forward on such lines as these."

The Hon'ble BABU SURENDRANATH BANERJEE's motion being put, the the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Ranajit Sinha, Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apar.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble Babu Surendranath Banerjee's last amendment having been lost, the Hon'ble Mr. APCAR, by leave of the Council, withdrew his motion for the amendment of section 89A (now 96).

He said:—"I will abide by the result of the Hon'ble Babu Surendranath Banerjee's motion, and I will not trouble the Hon'ble the President to put my amendment to the Council."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 89A (now 96), sub-section (1), line 3, after the word "Committee" be added the words "consisting of not less than five and not more than nine Commissioners."

He said:—"I think this amendment has the merit of being harmless and at the same time very useful. In the first place, I desire to remind the Council what has been said in other places by people who are better acquainted with the working of the Calcutta Municipality than I am, that the chief source of weakness of the Committees appointed by the Corporation lies in what might be supposed to be their source of strength, namely, their unwieldy size. In the next place, I desire to point out that in section 88, sub-section (3) [now section 95, sub-section (4)], we have provided that every Sub-Committee appointed by the General Committee shall consist of not less than three and not more than six Commissioners, and, unless a similar provision is introduced into this section, it might so happen that when the Corporation would proceed to appoint a Special Committee to enquire into and report upon any particular matter, a gentleman might get up, as it often happens at meetings, and propose X, and X would propose Y, and so on, till in the course of five minutes it would be found that the Committee was so large that it was practically useless. This, at any rate, is my experience of what happens in a place other than the Corporation. Then I desire to point out further that a Special Committee appointed by the Corporation cannot be of a miscellaneous character. If you will read paragraph 20 of the despatch of the Government of India, you will find the following statement:—

"I am also to suggest that it might be desirable to lay down rules for the appointment of the Special Committees and Sub-Committees which would secure their being truly representative, in respect of their constituent elements, of the Corporation or General Committee appointing them. The provisions regarding the making of rules and bye-laws for the conduct of the business of Special Committees and Sub-Committees under sections 89A and 590 (now 96 and 559), in connection with sections 595 and 597 (now 566 and 569), might be extended to include their constitution in general agreement with the principles already laid down. It might not be necessary or feasible for all such Special Committees and Sub-Committees to be homogenous in constitution with the body appointing them; but it is clear that in some cases at least such homogeneity alone would secure efficiency and obviate friction."

"This makes it manifest that these Special Committees cannot consist of anybody and everybody. There must be a representation of the different elements of the Corporation, and I think it is very desirable that there should be some limit, and the limit which I propose is that the minimum should be 5 and the maximum 9. If the opinion of the gentlemen who are better acquainted with the ways of the Calcutta Corporation is in favour of altering these numbers, I am quite ready to fall in with their view; but my point is that some minimum and some maximum should be fixed."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I may say on behalf of the Select Committee—and I think the Hon'ble Member in charge of the Bill will support me—that we deliberately left the number open to be decided by the Corporation. Of course too large a number would not be desirable, but at the same time, having regard to one of the objects of the Bill, which is to enable a large number of Commissioners to take part in the working of the Corporation, it would not be desirable to fix any maximum, and that I believe was the reason why we left the number open. A statement was made by the hon'ble mover of the amendment as to his experience with regard to what occurs at meetings of the body with which he is connected, namely, that some one would propose X, and X would propose Y, and so on, until the number is inconveniently raised. That is not the practice of the Corporation at all. The practice of the Corporation is first to fix the number of the Committee and

having done so to submit the names. There was a reason why the number of the General Committee and the number of the Sub-Committees have been fixed: there is a payment of fees made to members of the General Committee and of Sub-Committees of the General Committee; but no member of a Committee of the Corporation attending a meeting of the Committee gets a fee. Therefore, there was no object in fixing the number. I have not a very strong feeling about the matter; but it strikes me that having regard to the object which we have in view, viz., that a large number of Commissioners should take part in the work of the Corporation—it would be as well to leave the matter of number to be determined by the Corporation in each individual case. I know there have been cases where there have been Committees of the whole Corporation, but I think the Corporation has found out its mistake, and the steady trend of opinion now is to make the Committees workable—not too large nor too small. It would be a pity to interfere with the discretion which the Corporation has in recent years exercised with satisfaction. That is my personal feeling about the matter. If the number is to be fixed, I think the maximum ought to be more than 9. You have fixed 12 as the maximum of the General Committee. I would fix 16 as the maximum of the other Committees; but I do not know what my friend the Hon'ble Mr. Apcar may have to say about this proposal."

The Hon'ble Mr. APCAR said:—"I had no idea of taking part in the discussion, but I am being dragged in by my hon'ble friend Babu Surendranath Banerjee. I have got no very strong views about this amendment. I think on the whole, however, it is a matter which might well be left to the Corporation. I agree with my friend that, although there was a mistake made for a little while, the Corporation came to their senses very quickly; and they have not abused the power that was given to them to appoint the number of any Committee, and it is perfectly true that we first fix the number and then we elect the members. So that there is not the same tendency of the Committee outgrowing limits as the Hon'ble Dr. Asutosh Mukhopadhyaya is apparently used to in the body that he ornaments; and, so far as this particular question is concerned, I think, if the Hon'ble Dr. Asutosh Mukhopadhyaya had been better acquainted with the actual practical working of the Corporation, he would have hesitated to bring forward this motion."

The Hon'ble Mr. BAKER said:—"I purposely deferred speaking until after the two Hon'ble Members who represent the Corporation had expressed their views, because, Sir, it seems to me that, as these Committees are to be Committees of the Corporation, we should do well to pay attention to the views which their representatives express. At first I was disposed to think that the amendment was one which should be accepted, but after hearing the views expressed by the Hon'ble Babu Surendranath Banerjee and the Hon'ble Mr. Apcar, I propose to vote against it."

The motion was then put and lost.

SECTION 97.

The Hon'ble Mr. APCAR moved that in section 90 (*now 97*), sub-section (1), for the words "signed by the President after each meeting" the words "laid before the next ensuing meeting and signed at and by the President of such meeting" be substituted.

He said:—"I desire to make a very small change in this section which will in no way affect the working of the administration. It is intended simply to give power to see that the resolutions and proceedings have been properly recorded. Sub-section (1) of section 90 (*now 97*) runs thus:—

'Minutes of the proceedings of each meeting of the Corporation shall be drawn up and fairly entered in a book to be kept for that purpose, and shall be signed by the President after each meeting.'

"I ask that the proceedings of each meeting be laid before the next ensuing meeting and signed at and by the President of each meeting."

The Hon'ble Mr. BAKER said:—"This is a very small matter, and no doubt it is a perfectly reasonable and legitimate arrangement. But it may happen that the President of the ensuing meeting was not the President of the meeting the proceedings of which are to be confirmed; it is better therefore that the President of the original meeting should sign the minutes of that meeting at once. That is the existing practice. I have never heard it objected to, and I see no reason to alter it."

The Hon'ble Mr. APCAR, in reply, said:—"I have followed intentionally the wording of sub-section (2), as I thought that would be the most acceptable form. As for the possibility of the subsequent meeting being presided over by another President, that would not matter, and there would be no bar to his signing the proceedings of the previous meeting. The object of my motion is only to give an opportunity to see that the proceedings have been correctly recorded. The Hon'ble Member in charge of the Bill has not stated that there would be any inconvenience, and I think it is the more orderly course to pursue. The proceedings of the previous meeting are put to the members of the ensuing meeting, and the President asks whether they should be confirmed. That is the ordinary course at all business meetings."

The Hon'ble Mr. MACKENZIE said:—"The Hon'ble Mr. Apar is materially correct as to the procedure at business meetings; the minutes of proceedings are generally circulated, and, if found correct, the President of the next meeting, whoever he may be, signs them at that meeting."

The motion was then put and agreed to.

The Hon'ble Mr. APCAR also moved that in section 90 (now 97), sub-section (2), for the words "signed at and by the President of the next ensuing meeting" the words "laid before the next ensuing meeting and signed at and by the President of such meeting" be substituted.

He said:—"This amendment is of the same nature as the last. I only ask to bring sub-section (2) into conformity with sub-section (1), and all that is material to be changed is the inclusion of the words 'laid before.' But this change requires some further alteration in the wording, and therefore I ask that the words in my amendment be substituted."

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that, after the word "minutes" in line 1 of sub-section (1) of section 90 (now 97), the following words be inserted:—

"of the names of the members present and."

He said:—"This is a small matter. In the case of meetings of the General Committee the names of the members present are to be entered, but in the proceedings of the Corporation the names of the members present are not to be given. I want to assimilate the two."

The motion was put and agreed to.

SECTION 99.

The Hon'ble BABU SURENDRANATH BANERJEE moved that, after the words "Local Government" in line 2 of section 92 (now 99), the following words be inserted:—"and to every member of the Corporation;" and that the same words be inserted after the words "Local Government" in lines 12 and 13 of the same section.

He said:—"It is the present practice for every member of the Corporation to get a full report of the proceedings of every meeting of the Corporation as well as of the General Committee and of all Special and Sub-Committees."

The Hon'ble MR. BAKER said:—"I object to this being made a statutory obligation. It is done at present, but it is not provided for by law anywhere. Under the second clause of section 92 (*now* 97), it is necessary to send not only a copy of the minutes of proceedings, but also a copy of all papers. What is now proposed must give rise to a great deal of expense in printing, stationery and postage. The minutes of proceedings are not in all cases read by the Commissioners who receive them. I object to making it a statutory obligation to send them to every member of the Corporation. I think it ought to be left to the Corporation and the General Committee to decide whether in any case the proceedings and other papers should be sent to members of the Corporation."

The Hon'ble MR. APCAR said:—"With regard to the minutes of proceedings, I may say that the General Committee have adopted a system of delegation; they have delegated to one of their members the duty of seeing that they have been correctly recorded, and he reports to the meeting. I hope this amendment will be conceded, so that every member of the Corporation may be kept informed of what is being done by the General Committee. The Commissioners in general have hardly anything practical left for them to do, and it is not much of a privilege to enable them to see what the General Committee is doing. I do not desire that all the papers which might be considered by the General Committee should be sent to every member of the Corporation, but they should have some information given to them, and, with regard to the question of statutory obligation, this section requires copies of all papers to be sent to the Local Government, which, after all, is really a theatrical display, for the Local Government can require the submission of all papers without there being any statutory obligation. But I am quite willing to meet my hon'ble friend if his opposition to the amendment is for the purpose of excluding all the details regarding matters which are mentioned in the proceedings of the General Committee. At all events copies of such proceedings as may be sent to the Local Government should also be supplied to the members of the Corporation."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"It is the business of the Legislature to give a permanent form to existing practice; what is custom should be stereotyped and transformed into law. The custom is to send copies of all these proceedings to every member of the Corporation; every scrap of paper is sent to every member; and, if it is and has been the practice for every member to receive these papers, there is no reason why that practice should not be stereotyped into law. I hope the Hon'ble Member in charge of the Bill will accept this amendment."

The Hon'ble MR. BAKER said:—"There is no objection to every member having a copy of all proceedings and papers being sent to him, but I object to making it a statutory obligation. Let it remain as it is."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I consider it very desirable having regard to the fact that the members of the Corporation will under the Bill know very little of what is done. If what I ask is done, the members will be kept fully informed of what is going on."

The Hon'ble MR. BAKER said:—"If it is desirable they can have them. All I say is, do not make it compulsory that they should have them."

The motion was then put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 92 (*now* 99), line 7, for the words "together with" be substituted "and, if the Local Government so directs in any case, shall also forward."

He said:—"It seems to me to be absolutely unnecessary to send to the Local Government every single bit of paper which might be laid before the

General Committee, a Sub-Committee, a Special Committee or the Corporation. I think that the procedure laid down in section 526 of the Bombay Act will be found sufficient for all practical purposes. I propose to make it obligatory on the Chairman to forward copies of minutes of proceedings to the Local Government: if it appears to the Government that further enquiry is necessary in any particular case, they may apply for the papers, which would then be duly forwarded."

The motion was put and agreed to.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 92 (*now* 99) the words "the minutes of the proceedings of such meeting were signed as prescribed in section 90 (*now* 97)" be substituted for "such meeting took place."

He said:—"Section 90 (*now* 97) prescribes the rules under which the proceedings of meetings of the General Committee, of Sub-Committees and of Special Committees are to be signed. In the case of Special Committees, the General Committee and Sub-Committees, they are to be signed at the subsequent meetings by the Chairmen of those meetings, and in the case of meetings of the Corporation they are to be signed by the President after such meeting, but it is not stated how long after such meeting. In section 92 (*now* 99) provision is made to send copies of minutes of all proceedings to the Local Government within ten days from the date on which the meeting took place, but it is not known whether such proceedings will be signed within ten days. It is not desirable that any minutes of proceedings should be sent to the Local Government until they are prepared in full and signed. I therefore propose that the proceedings should be sent within ten days after they are signed as prescribed by section 90 (*now* 97)."

The Hon'ble MR. BAKER said:—"This amendment follows necessarily on the acceptance of the amendment moved by the Hon'ble Mr. Apar in section 90 (*now* 97), sub-section (2); therefore I accept it."

The motion was put and agreed to.

SECTION 100.

The Hon'ble BABU SURENDRANATH BANERJEE moved that section 93 (*now* 100) be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that, if the last amendment be lost, for section 93 (*now* 100) the following clause be substituted for section 93 (*now* 100):—

"Every member of the General Committee shall be entitled to receive a fee of thirty rupees for each meeting of the said Committee at which a quorum is present and business is transacted and which he attends from the beginning to the end thereof:

"Provided that no more than one fee shall be paid to any member for his attendance at all such meetings in any week."

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following proviso be added to the above clause; or, if that clause be not carried, then to section 93 (*now* 100):—

"Provided that no fee shall be paid to a Hindu or a Muhammadan or an official member."

The Hon'ble MR. APCAR moved that section 93 (*now* 100) be omitted.

The Hon'ble MR. APCAR also moved that, if the last amendment be lost, the following amendments should be made in section 93 (*now* 100), namely:—

- (1) the words "and every member of a sub-committee a fee of sixteen rupees," and the words "or sub-committee" be omitted;
- (2) after the words "is transacted," the words "and which he attends from the beginning to the end thereof" be inserted;
- (3) for proviso (a) substitute the words "no more than one fee shall be paid to any member for his attendance at all such meetings in any one week;"
- (4) after clause (b) add the following:—
 - "(c) The fee shall be payable to a Commissioner appointed under section 7, sub-section (1a), clauses (a), (b) or (c) [*now* section 8, sub-section (2), clauses (a), (b) and (c)], and to no other.
 - (d) No fee shall be payable to any Commissioner who is in receipt of a salary from the Government."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that section 93 (*now* 100) be omitted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that, if the last amendment be lost, the following amendments should be made in section 93 (*now* 100), namely:—

- (1) at the end of the first paragraph, after the word "transacted" add the words "and which he attends from the beginning to the end thereof," and
- (2) add the following as proviso (c):—

"Not more than four fees shall be paid to any member for his attendance at all meetings in any one month."

The Hon'ble BABU JATRA MOHAN SEN moved that section 93 (*now* 100) be omitted.

The Hon'ble RAJA RANAJIT SINHA, BAHADUR, OF NASHIPUR, moved that the words "and every member of a Sub-Committee a fee of sixteen rupees" and the words "or Sub-Committee" in section 93 (*now* 100) be omitted.

The Hon'ble BABU BOIKANTA NATH SEN moved that section 93 (*now* 100) be omitted.

The Hon'ble BABU BOIKANTA NATH SEN also moved that if the last amendment be lost, the following should be added to section 93 (*now* 100):—

- "(c) not more than thirty fees shall be paid to any member for his attendance at all meetings in any one year."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"This is a very important part of the Bill, and it represents a striking departure from the provisions of the existing law. It is an innovation on our municipal system, and I may say it is a departure from the principles upon which the municipal system of the United Kingdom is based. The other day the Hon'ble Member in charge of the Bill remarked, with reference to certain observations that I had made, that he relied on the provisions of the English Public Health Act. I should like to ask him if, with regard to this matter, he will allow himself to be guided by the teachings of English experience? But possibly his answer will be that the situation is very different. I accept that statement. The situation is totally different along the entire line, but that does not prevent the Hon'ble Member from importing the provisions of the English law when it suits him. But, however that may be, the municipal system of the United Kingdom recognises no other incentive to the performance of municipal duties than public spirit and the desire to promote the public well-being. This Bill, however, proclaims to the world that Englishmen in India recognise other motives than those which prompt their countrymen in England—motives different from those prompted by public spirit and regard for the public welfare. I should like to ask the Hon'ble Member in charge of this Bill whether he is prepared

to stamp with the seal of legislative sanction a reflection of this kind upon the European community in this country. I am distinctly of opinion that the reflection is wholly unmerited. I will go further, and say that Europeans in this country require no other incentive than the stimulus of public spirit in the discharge of their public duties. In the past history of Calcutta, distinguished Englishmen have done admirable service for the good of the Corporation and the town. The names of such men as John Blessington Roberts, of James Wilson, of Mr. Brookes, of Mr. Wyman and others are cherished recollections in the minds of the people of this country. They did their duty without any remuneration save the approbation of their own consciences and the applause of their fellow-citizens. Are there no such men among Englishmen now in this country prepared to emulate their example? Why, Sir, there are facts within our knowledge which point to the presence of such men even in this Council. We have had forty meetings of the Select Committee on this Bill, and my hon'ble friend who so worthily represents the interests of the Trades Association (Mr. Spink) attended every one of those meetings. Mr. Turner, who represented the Chamber of Commerce, attended every meeting, with the exception of two, and those who are sitting here from day to day know with what devotion and zeal my hon'ble friends Mr. Mackenzie and Mr. Spink are assisting us in our work at considerable sacrifice of their own personal interests. Therefore, I am entitled to hold that there is enough of public spirit among the members of the European community in Calcutta to justify the hope that they will do their duty in the Corporation without the stimulus of fees. But after all, if it is deemed that the members of the European community do need the incentive of fees, I am prepared to say, on behalf of the Hindu and, I may add, of the Muhammadan community, that they require no such stimulus. For the last 23 years, Hindus and Muhammadans have worked in the Corporation and the General Committee with a zeal and earnestness for which they are entitled to the highest credit, and they never sought any fees at all. The Hon'ble Member in charge of the Bill will say—'It is impossible to introduce invidious distinctions in this Bill; if you pay fees to European non-official members, you must pay fees also to Hindus and Muhammadans.' To that my reply is that the whole Bill is a monument of invidious distinctions, and I will only refer to one matter. Members of the Corporation attending meetings of the General Committee and of Sub-Committees of the General Committee are entitled to the payment of fees, but members of the Corporation attending meetings of the Corporation and of Special Committees appointed by the Corporation are not entitled to any fees. You give fees to members attending meetings of one class; you refuse to give fees to members attending meetings of a different class. You make a distinction between Committees of the Corporation and Committees appointed by the General Committee. That is an anomaly, and, as I have more than once remarked, we are not concerned as legislators with the removal of anomalies; we are, however, far more interested in safeguarding the interests of the public purse. If Hindus and Muhammadans are willing and able to attend meetings of the General Committee and of Sub-Committees of the General Committee without the stimulus of fees, it seems to me that it is an absolute waste of money to pay fees to them. It is an expenditure of the public funds for which there is no justification, and I venture to say that the same remarks apply to the official members of the Corporation. They are paid for doing the general work of the country; municipal work is a part of the general work of the country, and therefore they need not be paid over again for municipal work. As a matter of fact, I can say that the official members of the Corporation have been most assiduous in their attendance at meetings of the General Committee and of the Corporation. The Hon'ble Mr. Oldham is a member of the General Committee, and so is the Hon'ble Rai Durga Gati Banerjee. I do not know of any member of the Corporation who has been more assiduous in his attendance than these two hon'ble gentlemen. Therefore, I submit that official members of the Corporation also do not require the stimulus of fees to ensure their attendance at meetings of the General Committee. It has been reported to me on authority that I consider sufficient that some time ago a discussion took place at a meeting of the Port Trust in which a strong protest was elicited from the official members against the payment of fees. Having regard to all

these considerations I am of opinion that fees ought not to be paid to the European members of the Corporation, for they have worked in the past with great zeal and devotion without the stimulus of fees. Both Hindus and Muhammadans and European official members have honourably worked in the past without the stimulus of fees; and fees therefore need not be paid to them. I desire in this connection to point out the positive danger which is likely to arise from the payment of fees. At the present moment the ablest members of the Corporation are elected as members of the General Committee; they do not canvass; they decline to canvass. My connection with the Corporation has lasted for 23 years, and I have been a member of the General Committee during the whole of those 23 years. When I was in England in 1897, I was during my absence elected a member of the General Committee, and during the 23 years in which I have been a member of the Corporation, I do not remember speaking to a single colleague of mine for his vote; and I believe that men like Babu Kally Nath Mitter, Mr. Apear, Babu Nalin Bihari Sircar, Babu Narendra Nath Sen and others have never canvassed for their seats in the General Committee. Canvassing is a thing which is unknown to the more experienced Commissioners. But the moment you introduce the stimulus of fees, inferior men will appear in the arena and will canvass for votes, and you will open a door to practices which cannot fail to be demoralizing. We decline to support any measure which is likely to result in the admission of inferior men to the General Committee. The monopoly of power is a thing which is tolerable; the monopoly of pelf is a thing which is intolerable to our instincts. I am perfectly certain that, if the system of the payment of fees is introduced, you will not get the best men to appear year after year as candidates for election to the General Committee. They will feel a delicacy in the matter, and they will decline to stand as candidates for election; they will not like it to appear that they want to have a monopoly of the fees. Therefore, you will lose the services of the best men on the General Committee. This is not only my view of the matter; it is also the view of my colleagues on the General Committee. I will, with Your Honour's permission, read to the Council extracts from some of the remarks made in respect of this question:—

'Babu Bhupendro Nath Basu was convinced that the payment of fees would be fatal to the continuance of the best men on Committees: they would be deterred from serving.

'The Hon'ble Babu Narendra Nath Sen considered the payment of fees to elected Commissioners most objectionable.

'Babu Bhupendro Nath Basu was of the same opinion. He believed it would operate to prevent good men from standing for election.

'Mr. Simmons remarked that the feeling against fees was that those elected on Committees in one year would feel disposed to make way for others on the next occasion; but in Joint-Stock Companies the same men would be found sitting on the Board year after year, and they were elected from time to time, because the shareholders felt confidence in their management of the affairs of the Company.

'Babu Kally Nath Mitter pointed out that in this Corporation the feeling of the members of the General Committee who had been re-elected year after year was strongly opposed to the payment of fees.

'The Hon'ble Babu Narendra Nath Sen thought that on this side of India people were likely to attribute mercenary motives to those who accepted fees, although the fees could in no case exceed Rs. 128 a month to any individual. There was no comparison between fees paid to the Directors of Joint-Stock Companies, which were Associations for profit, and the members of the Corporation.

'Babu Nalin Bihari Sircar observed that past experience showed that good men had been got to serve on Committees without fees.

'The Hon'ble Babu Surendranath Banerjee was certain that in England Members of Parliament and of County Councils were not paid fees.

'Babu Kally Nath Mitter said that the majority of the Amalgamation Committee, on whose report the present Act was in a great measure based, were in favour of the payment of fees, but the Legislature unanimously rejected their proposal.'

"There is thus a strong apprehension on the part of those entitled to speak with authority on the matter that the payment of fees would be fatal to the election of the best men on the General Committee, and that is the view which I desire the Council to accept.

"It is said that this is the Bombay system, but I submit that the circumstances of Bombay and Calcutta are very different. Bombay is a commercial city in a far greater sense than Calcutta is. The commercial instinct is predominant there. The town is studded with mills, of which many of the Commissioners are Directors, and they are accustomed to the payment of fees. Under the Bombay Act only one fee can be paid to a member in a week; under this Bill as many fees may be paid in the course of a week as there are meetings during that time. Under the Bombay Act a member must attend from the commencement of a meeting to the end of it; here he need not do so. In Bombay there is no payment of fees for attendance at Sub-Committees; under this Bill fees are to be given to members of Sub-Committees appointed by the General Committee. Therefore, in this Bill you go much beyond what is provided in the Bombay Act; and yet you are introducing the system of the payment of fees for the first time into our municipal system. I do not think there is the smallest justification for going beyond the Bombay Act.

"This question of the payment of fees was first considered by this Legislature in 1888. It was incorporated in the Bill, but was thrown out by the Select Committee after careful consideration. Sir Henry Harrison alone was in favour of it. The other members of the Select Committee were opposed to it, and I believe Sir Henry Harrison himself subsequently changed his opinion.

"These then are the grounds on which I venture to rest my amendment. I say, first, to the representatives of the European community that gentlemen of their community have worked admirably in the Municipality of Calcutta without the stimulus of fees; they did not need in the past the stimulus of fees to work with devotion and zeal for the good of the city. But admitting that times have changed, that circumstances have altered, admitting that they should be paid fees now, then I say pay fees to the European members of the Corporation and to no one else. Hindu and Muhammadan members do not want fees; they have done good work without receiving fees. The official members of the Corporation have done likewise. They are paid for the general work of the country, and they need not be paid fees over again. If all these arguments make no impression upon you, then I beg you to follow more closely the provisions of the Bombay Act. I ask you to make the assimilation as close as possible. The Bombay Act does not authorise the payment of fees to members of Sub-Committees; why should we? The Bombay Act does not authorise the payment of more than one fee in the week; why should we? The Bombay Act makes attendance from the commencement to the end of a meeting compulsory; why should we not do the same? If you insist on the payment of fees, let us have the Bombay system in its entirety. Some deference is due to the expression of opinion of the representatives of the Indian community. As a member of that community, I say we do not want fees, and, if you do pay us fees, it will be a waste of the rate-payers' money. Therefore, having regard to the strong feeling which exists in connection with this matter and to the provisions of the Bombay Act on the subject, I appeal to you to assimilate the Calcutta municipal law as far as possible to the Bombay Act, and above all I ask you not to make any payment to the members of the Hindu and Muhammadan communities who do not require the stimulus of fees to induce them to give their time and trouble to the service of the Corporation."

The Hon'ble THE PRESIDENT said:—"It will be convenient if the four Hon'ble Members who have given notice of amendments of a similar kind will now address the Council, so that the discussion may be taken up on all those amendments together."

The Hon'ble MR. APCAR said:—"I think that it would be an advantage if at this stage I move my amendments in connection with this matter. My amendment follows very much on the lines on which the Hon'ble Member who has just spoken has proceeded. My first amendment is that section 93 (now 100) of the Bill be omitted; my second motion is to exclude the payment of fees to the members of Sub-Committees; my third motion makes payment of fees possible

only to members of Committees who attend meetings from the beginning to the end; my fourth motion is on the lines of the Bombay Municipal Act, that no more than one fee shall be paid to any member for his attendance at all meetings in one week; my fifth motion is that after clause (b) the following be added:—

“(c) The fee shall be payable to a Commissioner appointed under section 7, sub-section (1a), clauses (a), (b) and (c) [now section 8, sub-section (2), clauses (a), (b) and (c)], and to no other.

“(d) No fee shall be payable to a Commissioner who is in receipt of a salary from the Government.”

“I do not intend to address the Council at any length after the very able speech which the Council has just heard from the Hon'ble Babu Surendranath Banerjee, but I should like to point out that some change has been made in the Bill since its introduction. Before we were told, in regard to the members of the European community, that they have refused to join the Corporation because of the loss of time in excessive talking, and the preponderance of the Hindu vote. Those two objectionable features have now almost entirely been removed. There should be little or no talking for the purpose of speaking in a Committee of twelve members, and there has also been made a reduction in the number of members in the Corporation, which will tell almost entirely on the Hindu vote, under the direction of the Supreme Government; and therefore all the reasons, which we are told have hitherto tended to keep away the European mercantile element from taking part in the proceedings of the Corporation, have been removed. If that is so, why introduce the question of fees? If the European element would have taken part in the proceedings if the objectionable features had not existed, they will be able to do so, now that the way has been cleared for them, without any fees. In justification, we are told that fees are paid for attendance at meetings of the Port Trust. But it does not follow that if they were not paid the mercantile community would not serve on that body. But I submit that there is considerable difference in the circumstances of the two bodies. In the Corporation it will be an entirely new departure: there has been no payment of fees hitherto; then why introduce it there now for the first time? I am under the impression that the members of the Port Trust are chosen on a wider basis from among the members of the mercantile community. In the Corporation, we have to choose and elect members of the General Committee from among a certain circumscribed body, and I believe a mistake will be committed in introducing the system of payment of fees in the Corporation. There will, I feel sure, be a strong dislike on the part of those who are elected to be members of the General Committee from offering themselves again and again, because of the idea that they desire to monopolise among themselves the fees which are to be paid; so that there is a real danger of inferior men becoming candidates and succeeding in their endeavours by reason of the desire of their fellow Commissioners to help to get them some remuneration. I think there will be this feeling in the *personnel* of the General Committee. If, however, fees are to be paid, let the rate-payers get a fair share of work for what they pay, and to ensure this I have moved that, in order to earn their fees, the members must attend meetings from the commencement to the end of the meeting; otherwise some member might attend a meeting for five or ten minutes and yet receive his fee by reason of having attended the meeting. I do not think that is right. As my hon'ble friend Babu Surendranath Banerjee has said, if we are going to introduce the system of payment of fees, we ought to conform to the Bombay law, which has been quoted as an example, by which attendance is required from the beginning to the end of a meeting, and under which also no fee is paid to a member of any Sub-Committee. We are told that the system of the payment of fees is necessary to induce members of the mercantile community to take part in the work of the Corporation. If that is so, let fees be paid to them; but why thrust fees on those who have no desire to receive them? If the argument is relied on that there would be an invidious distinction if any class were not paid fees, it should rather be made on behalf of those who want such payments; but why should fees be thrust upon those who disclaim any desire to get them? If the members of the mercantile community have not sufficient local patriotism to

induce them to give their services for the good of the city, let them be paid; but why should fees be paid to those who have hitherto been working, with the utmost devotion and zeal, without the payment of fees?"

The Hon'ble BABU JATRA MOHAN SEN asked permission to move his motion to omit clause (b) of section 106 (*now* 114) with his motion that section 93 (*now* 100) be omitted. He proposed to eliminate clause (b) of section 106 (*now* 114), which provided for the application of municipal funds. If the motion to omit section 93 (*now* 100) were carried, then clause (b) of section 106 (*now* 114) must necessarily be omitted; and, on the other hand, if that motion were lost, this must fall to the ground. After what had fallen from Hon'ble Members who had preceded him, he did not think it necessary to take up the time of the Council by repeating their arguments.

The Hon'ble BABU BOIKANTA NATH SEN said:—"I beg only to supplement a few remarks to what has been so ably said by the Hon'ble Babu Surendranath Banerjee and the Hon'ble Mr. Apar. It appears to me from a study of the literature of this Bill that this question of the payment of fees arose from two considerations, namely, that the members of the European mercantile community do not stand for election as Municipal Commissioners, and, when nominated to the Municipal Board, they do not like to attend at meetings, and for this state of things the reasons given are that there is too much talking and waste of time, and there is besides the preponderating standing majority of the Hindu element, and that they cannot afford to lose their time for nothing. This remuneration in the shape of fees is therefore provided as a return for the time they will give to the service of the municipality. But I submit that the interests which those gentlemen will come to serve in the municipality ought to be considered as sufficient remuneration."

The Hon'ble MR. BAKER said:—"I wish to say as little as possible upon this subject. I recognize that it is one in which there is room for considerable difference of opinion. I may confess that my personal feeling is against the payment of fees, and I should be glad if it had been possible to dispense with them. But I submit that it is a necessary corollary to the system we are introducing into the municipal constitution of Calcutta. It is our object to place the municipal administration of the affairs of the town on a business footing; to carry on the business of the town in a businesslike manner with the active assistance of business men, and, if we are to do this with success, we must adapt our methods to those with which business men are familiar. The members of the General Committee under the new system will approximate more or less to a body of Directors of a limited liability Company, and it may be fairly argued that they are entitled to reasonable remuneration for the time and trouble they will devote to the affairs of the municipality. And, when the Hon'ble Babu Surendranath Banerjee denounces the payment of fees and suggests that such payment would tend to keep the best men away from the municipal body, I reply that he is in danger of spoiling his case by overstating it. We know that for many years fees have been paid to the members of the Standing Committee in Bombay, that that system has worked well, and that it has secured the co-operation of some of the most capable members of both the European and Native communities in Bombay. The Hon'ble Member said that the circumstances of Bombay are different from those in Calcutta. He said—and I could hardly believe my ears when I heard it—that Bombay is more a commercial town than Calcutta is. I can hardly imagine what he meant. The foreign trade of Bombay is as nearly as possible the same as that of Calcutta. It is the port of shipment of a large part of the produce of Northern India. Precisely the same may be said of Calcutta. There is not a pin to choose between the two. The only difference is that in Bombay the commercial community have hitherto taken an active part in the work of the Corporation, whereas in Calcutta for one reason or another they have hitherto kept aloof. It is now the object of this Bill to attract the mercantile community to take a part in the work of the municipality, and therefore the reason which the Hon'ble Babu Surendranath Banerjee assigned for making a distinction

between Calcutta and Bombay no longer applies. Not only are the members of the Standing Committee paid in Bombay, but the members of the Port Trust are also paid both here and in Bombay. The Corporation sends a representative of their body to the Port Trust, and the payment of fees made there has not deterred Native members of the Corporation of the highest position and character from accepting the office of a member of the Port Commission. We know also that a substantial honorarium is or used to be paid to every non-official Member of the Imperial Legislative Council for his attendance during the session of the Council. If the Hon'ble Member will refer to the Civil Service Regulations he will find that formerly a fee amounting to Rs. 10,000 a year used to be paid to the Additional Members of Council for their services."

The Hon'ble BABU SURENDRANATH BANERJEE:—"That refers to Members who come from outside the Province in which the Council is sitting."

The Hon'ble MR. BAKER said:—"The payment of that fee has not deterred gentlemen (European and Native) from seeking the honour of a seat in the Council. The only objection to the provision before the Council is the expense it will involve. I admit that this is to some extent a drawback, but it is only part of the price we have to pay for improved municipal administration; and, if the improvement is as great and far-reaching as we hope, the money will have been laid out to the best possible advantage."

"The Hon'ble Member said that if we are to have payment of fees let us follow the Bombay system, namely, let us pay no fees to members of Sub-Committees, nor to those who do not attend a meeting from the beginning to the end of each meeting. I am able to state that the Government is willing to accept the amendment which stands in the name of the Hon'ble Mr. Apcar, namely, that fees should only be paid to members of the General Committee who attend a meeting from beginning to end. So far we are prepared to go; but as to the payment of fees to members of Sub-Committees, it is true that in Bombay they are not paid, but I regard that as an anomaly in the Bombay system. The Sub-Committees are agents and delegates of the General Committee and are employed to do a part of the work which the law assigns to the General Committee; and their claims to receive fees are just as great as that of members of the General Committee itself. Lastly, in reference to the proposal to grant fees only to the European non-official members of the General Committee, I may ask whether the Hon'ble Member can produce any possible precedent for such an anomalous and invidious and inequitable proposal in any civilised part of the world."

The Hon'ble MR. OLDHAM said:—"Both my hon'ble friends who represent the Corporation have referred to the delicacy which some of the elected members of the Corporation may feel with regard to the acceptance of these fees. I can place at their disposal one solution of that difficulty, though doing so involves my troubling the Council with a personal statement. I cherish the ambition, if the Government will permit me, of being returned as an elected member of the Corporation of Calcutta as my distinguished predecessor in office, Mr. Hebert Reynolds, was before me. If I am elected or become a nominated member of the General Committee, I wish to say that I do not intend to accept payment of fees for my attendance at meetings of the General Committee or of Sub-Committees of the General Committee, and it is perfectly open to any one to follow the same course. I only make this profession in order that I may have a free voice and a free hand in speaking and voting on this matter. Nothing has been more striking than the abstract way in which this matter has been discussed—first, as if there were no precedent, and then at last the example of the Bombay Municipality has been cited as if it were the only precedent; and the Hon'ble Babu Surendranath Banerjee asked if the Hon'ble Member in charge of the Bill is following English teachings in regard to this matter. My answer to that is that we are strictly following the teachings of Englishmen, for wherever they have found themselves in this position in any part of the world—in America, in Australia and other places—they have adopted this system of, fees in return for their services. Throughout America and in every Colony

in Australia this system is in force. Calcutta is not an old Indian city like Delhi or Agra. It started as an English colony as much as any other colony which England possesses. After all our researches we cannot trace a single descendant of the former inhabitants except the representatives of two houses whose ancestors had, in 1689, recently come from Hooghly, and were then obscure people. Here, as in Bombay, we talk of Europeans and natives as if the Indians are the natives of those places, while the true natives are probably people with European blood. When Bombay was taken possession of, the sole inhabitants who were found were seven fishermen. Therefore, how can we speak of Europeans and natives as if there was any native population still represented when the English formed these two settlements? Indians have come into Calcutta just as much colonists as the Europeans, and Englishmen have only followed in their colony of Bombay the example which they or their descendants have followed wherever they have gone."

The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH said:—"I do not wish to give a silent vote in this matter. I do not think the payment of fees for attending municipal meetings is a right policy. I am sure that no Muhammadan or Hindu of rank and position would like to take fees for his attendance and for devoting a portion of his time to municipal matters. I therefore do not think it right to give them the idea that they are entitled to remuneration. I hope that the Council will agree with me and omit section 93 (now 100)."

The Hon'ble MAULVI DELAWAR HOSAIN AHMED said:—"It does not seem clear to me that the principle of payment of members is a right principle. Members of Parliament are not paid in England, and no real attempt has ever been made to give a pecuniary character to the services rendered by them.

"We have got municipal institutions from England, and we should try to follow England, where the principle has, as I understand, not yet been applied.

"The General Committee will now consist of a smaller number of members, and there will be a more equitable representation of classes. The risk of loss of time from excessive talk will be less, and no class will be in a hopeless minority. I believe, therefore, that no inducement will be necessary, and I think the provisions of this section are of doubtful value."

The Hon'ble MR. MACKENZIE said—"The payment of fees is well known and recognised both in England and in India; it exists in the Bombay Municipality and also in the Calcutta Port Trust. As the Hon'ble Member in charge has said, if you wish to induce business men to give their time and labour to the work of the Municipality, you must follow the methods to which business men are accustomed. If the suggestion that fees should only be paid to Commissioners who attend from beginning to end of a meeting is intended to bar any one arriving a few minutes late for a meeting receiving his fee, then I am opposed to it, for it is the custom in business meetings to allow a reasonable grace. Any one having arrived at a meeting would naturally remain till the business before the meeting had been disposed of."

The Hon'ble RAJA RANAJIT SINHA, BAHADUR, OF NASHIPUR said:—"I also support this amendment, and I shall at the same time move the amendment which stands in my name, namely, that the words 'and every member of a Sub-Committee a fee of sixteen rupees' and the words 'or Sub-Committee' in section 93 (now 100) be omitted. My amendment is the same as the one which is standing in the name of the Hon'ble Mr. Apar. I do not see any necessity for the payment of fees to the members of the General Committee and also to members of Sub-Committees of the General Committee as well. Every one knows that jurors who come from a long distance to serve in Courts of Justice to the detriment of their own work are not entitled to any fees. Moreover, the payment of the paltry sum proposed in this Bill to members of the mercantile community will not afford a sufficient incentive to gentlemen of position and standing to leave their business and attend at meetings of the General Committee; therefore, in my opinion, it will be superfluous to pay any fees. As to

the payment of fees to members of Sub-Committees of the General Committee, if members of Special Committees are not to be paid any fees, I do not think it is reasonable to pay any fees to the members of the Sub-Committees appointed by the General Committee, which is the second co-ordinate authority in the Municipality."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"My amendments upon section 93 (now 100) are practically identical with those already moved by the Hon'ble Mr. Apear and the Hon'ble Babu Surendranath Banerjee, and it will be convenient to the Council if I deal with them at this stage. I do not wish to conceal the fact that, when I first came across this provision in the Bill, I simply felt shocked at the suggestion that members of the Corporation were to receive fees for attendance at meetings of the General Committee and of the various Sub-Committees. I am not in the habit, Sir, of using strong language, but the word 'shocked' precisely expresses my feelings. When I first read the section in the Bill, the question which was uppermost in my mind was this—have public feeling and public spirit fallen to such a low ebb in the metropolis of the Indian Empire that people of all classes and creeds cannot be found in sufficient numbers to take a genuine interest in the municipal affairs of this city without the introduction of the mercenary system of payment of fees? I cannot claim to have a personal knowledge of the Calcutta Corporation, but the intimate knowledge I can claim to possess of the working of the body I have the honour to represent justifies the assertion that there is still considerable public spirit in this city, and it will not come as a surprise upon Hon'ble Members when I tell them that week after week, month after month, very arduous and useful work is carried on in the University by members, European and Indian, official and non-official, who would consider it a grievous insult if they were offered any remuneration for their services. I am proud to think that, in the past, at any rate, similar feelings have dominated the Calcutta Corporation. I still decline to believe that the incentive of fees is necessary to induce any member of the educated Hindu community to interest himself in matters municipal; and I was reluctant to believe that a provision of this kind had been introduced in the interests of the members of the European community, until the Hon'ble Member in charge said that it was needed to secure their active co-operation."

The Hon'ble MR. BAKER:—"I said business men."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA continued:—"That only strengthens my position. If the Hon'ble Member intended to include not only European men of business, but also Hindu and Muhammadan men of business, then I affirm that absolutely no case has been made out for the imputation that the public spirit of the latter has to be whetted by the sight of gold. The Hon'ble Member further contends that it is a necessary corollary to the principle which underlies the Bill, namely, if you want business men to take an active interest in matters municipal, you must pay them fees. I am half tempted, Sir, to quote the caustic observation of the Emperor of the French, but I will content myself with saying this much, that, even if this argument is conceded, the position is not established. Let us consider the question closely for a moment. Ten out of fifty members of the Corporation are to be, if I am allowed the use of the expression, commercial members, and four out of twelve on the General Committee are to belong to the same class. Now, assume that it is desirable, or even necessary, to secure the services of this minority by the payment of adequate remuneration. What possible excuse is there for the offer of fees to the majority, who have never demanded them, and in respect of whom no one has even ventured to suggest that their services have to be bought? Why offer this gratuitous insult to Hindus, Muhammadans and non-commercial Europeans, whose zeal and public spirit none can question? Why squander our funds in this wasteful fashion—funds, remember, the substantial portion of which has been wrung from the poor? These are unpleasant and inconvenient questions, and I am afraid they must go without an answer."

"There is, Sir, one other matter in connection with this subject to which it is my painful duty to allude. In the Bill as originally framed there was a very sensible and salutary provision that no member would be entitled to a fee unless he attended a meeting from the beginning to the end thereof. The Select Committee have withdrawn this clause, and, I must say, for a very extraordinary reason; they say that the provision in question is not in accord with the rules of ordinary commercial practice. I confess, Sir, I read this statement with mingled feelings of surprise and regret. We are all aware that a similar provision finds a place in the Bombay Act, and no one has suggested that it has not worked well in Bombay, which, to put it mildly, is quite as much a commercial city as Calcutta. But, Sir, apart from all precedents, is the change defensible at all upon principle? Is commercial ethics something different from ordinary ethics? Do commercial men ever pay full wages for half a day's work? If they ever did that, would they not speedily find themselves on the surest road to bankruptcy? Or, Sir, is this novel principle to apply only when commercial men have to receive and not when they have to pay? I am forced to say, though with the deepest regret, that this desire to be paid and to be paid in full, when one is not prepared to do the whole work, appears, in my humble judgment, to be not very elevating."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I have had the honour of being a Member of this Council for the last six years, and I have never witnessed a more striking demonstration of feeling on the part of the Hindu and Muhammadan Members of the Council than when I listened to-day to two distinguished members of the Muhammadan community, one of whom is in the service of the Government and the other uniformly votes with the Government, urging that they would be no parties to any measure which proposed payment of fees to Municipal Commissioners. The Hon'ble Sahibzada Mahomed Bakhtyar Shah has been among the strongest supporters of this Bill, and I have never yet found him say 'No' to any provision contained in this Bill either here or in Select Committee. But he feels this to be a reproach—I was going to say that he looks upon with horror—that the representatives of his community should be called upon to receive fees for work to be performed for the benefit of the public, and he has been compelled to say 'No' to this proposal in the Bill. Thus we have here representatives of the Hindu and Muhammadan communities all uniting in a common protest against this part of the Bill, against which therefore it must be assumed that there is arrayed a strong body of public feeling. And I venture to submit that it is the duty of the Council to take note of this feeling. When we have representatives of both these communities urging that they do not want these fees, that they would have none of these fees, that it is the duty of the representatives of the people to do the work of the Municipality without the payment of fees, I submit that the Council ought not to enact into law these provisions of the Bill. My hon'ble friend in charge of the Bill has referred to the invidious distinction which the law would create if fees were only to be paid to some class of members and not to others. No doubt that would be an invidious distinction. I am free to make that admission. But there are already distinctions in the Bill—distinctions between the members of the General Committee and members of Sub-Committees appointed by the General Committee on the one hand, and members of Special Committees appointed by the Corporation on the other."

The Hon'ble MR. BAKER said:—"There are no differences of race."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am sorry the Hon'ble Member has raised the question of race. He has told the Council more than once that the intention of the Bill is to cut down the Hindu majority. Is not that a racial consideration of a very glaring character? If you talk of distinctions and distinctions based on racial considerations, I say that such distinctions bristle in this Bill from the beginning to the end. The whole Bill is based on these considerations, and therefore that is not an argument which ought to stand in the way of the acceptance of my amendment. My hon'ble friend says that in the Bombay system there is an anomaly. He has not, therefore,

adopted the law as it prevails in Bombay. I think the people of Bombay know their own business best, and we should be wise in following them. I do not see why any fee should be paid to members of Sub-Committees appointed by the General Committee, and I think no justification has been made out for making such payments. I earnestly beg Your Honour to take note of the unanimity of feeling which exists among the representatives of the Hindu and Muhammadan communities in this Council. We object to the payment of fees altogether. We do not wish such a principle to be incorporated in the law. At any rate, we do not wish that the members of the Hindu and Muhammadan communities should have the opportunity of accepting fees, and we hope that such an opportunity will not be afforded to them. Pay fees to those who need them; don't pay fees to members of the Hindu and Muhammadan representatives on the General Committee. As to the argument based on invidious distinctions, we need not trouble ourselves about it. Distinction there are in abundance and superabundance in this Bill, and one more distinction will only be in conformity with the entire tenor of the Bill. I earnestly hope the Council will take these points into their serious consideration and accept my amendment."

The Hon'ble MR. APCAR, in reply, said:—"I don't think any more extraordinary spectacle has been seen in this Council than the Hon'ble Member in charge of the Bill attempting to force people to take fees for work done in the municipality who do not want to take them. They cry out against it, they say they object to the payment of any fees, but he is determined that they shall take fees, whether they want them or not."

The Hon'ble THE PRESIDENT said:—"That is not the statement of the Bill. The Bill only provides that fees shall be payable: no man is forced to take a fee."

The Hon'ble MR. APCAR said:—"There has been no more effective reply given to this provision of the Bill than that which has been made by the Hon'ble Mr. Oldham; still it is insisted that this provision shall be engrafted into the law. The section says that all shall be entitled to the payment of fees, and the meaning will be eventually that all shall be paid. Under the law there is to be a payment of fees when both Muhammadans and Hindus cry out against it. If it is so, and only the representatives of one class of the community ask to be paid fees, I say the opinion of the majority of those concerned in the matter being of such a kind, this provision should not be enacted in the law; and, if it is to be enacted, let it be made only in favour of the class who ask to be paid. I have not had the advantage of hearing what the Hon'ble Member who represents the Trades Association (Mr. Spink) has to say in the matter. I know that members of the Calcutta Trades Association have served on the Corporation faithfully, and have given their time and attention to the affairs of the Municipality without expecting the payment of fees. I know that in the Port Trust fees are paid for attendance of members; they are offered to them and they are taken, but it does not follow that, if fees were not paid, they would not serve on the Port Trust. Calcutta is no doubt equal to Bombay as a commercial city, but the native element is far more largely represented in Bombay in mercantile matters than it is in Calcutta. Here the native element is not represented in the same way; and, as far as the payment of fees to members of Sub-Committees is concerned, that provision is not in operation in Bombay. The Bombay Municipal Act has been in operation since 1872. There was an amendment in 1883, and yet members of Sub-Committees have not been paid any fees. I think that, with the strong expression of opinion which has been elicited, the payment of fees should be disallowed."

The Hon'ble MR. SPINK said:—"Sir, I have not spoken before, as my mind was open with regard to this subject; but, as the Hon'ble Member who has just sat down has appealed to me for an expression of opinion, I beg leave to say that personally I would be willing to work without the payment of fees, but I know there is a general feeling that fees should be paid. A fee is looked upon rather

in the light of reasonable remuneration for time and services given to the affairs of the Corporation than as an attraction to be a Commissioner. I am perfectly certain that there are many members of the European community who would be willing to be members of the General Committee without being attracted merely by the prospect of receiving fees. I think it is reasonable to pay fees; there is no novelty in such a practice, as it is a recognised principle in business circles throughout the world, though personally, as I have said, I should be willing to work myself without the payment of fees. I regret I cannot support the amendment."

The motion that section 93 (*now* 100) be omitted being then put, the Council divided as follows:—

Ayes 7.

The Hon'ble Raja Ranajit Sinha, Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyay.
The Hon'ble Sahibzada Mahomed Bakht
Shah.

Noes 11.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble BABU SURENDRANATH BANERJEE's moved that for section 93 (*now* 100) the following clause be substituted, namely:—

"Every member of the General Committee shall be entitled to receive a fee of thirty rupees for each meeting of the said Committee at which a quorum is present and business is transacted and which he attends from the beginning to the end thereof:

"Provided that no more than one fee shall be paid to any member for his attendance at such meetings in any week."

He said:—"The provision in the Bombay Act is exactly the same as this amendment. I have no objection to make the fee amount to thirty-two rupees instead of thirty rupees, but I have put the amount as I find it in the Bombay Act. I have also to point out that this is the provision in the original Bill with a slight modification. The Hon'ble Mr. Spink has been good enough to remark that members of the European community do not want the fee to be such as would represent an adequate remuneration for their time and trouble, but they expect some slight remuneration; therefore we need not have more than one fee a week as in Bombay. I think we ought to proceed on the lines of the Bombay Act, both in this respect and in respect of attendance from the beginning to the end of the meeting. I hope this amendment will be accepted."

The Hon'ble MR. BAKER said:—"I have very little to add to what I have said already. I cannot accept this amendment, because it makes no provision for the payment of fees to members of Sub-Committees of the General Committee. I do not also agree to the proviso. If the cost to the public purse is the objection to the payment of more than one fee in the week, then no fees at all should be paid. The Bill follows the practice of the Port Commissioners, and I am sure it is the practice in all limited liability companies, and I can see no reason why, when two meetings happen to be held in one week, only one fee should be paid."

The Hon'ble THE PRESIDENT said:—"I think the Hon'ble Member in charge of the Bill accepted the Hon'ble Mr. Apear's amendment in this section, that

after the words "is transacted" the words and "which he attends from the beginning to the end thereof" be inserted."

The motion being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Ranajit Sinha, Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apar.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble BABU SURENDRANATH BANERJEE's motion that the following proviso, namely:—

"Provided that no fee shall be paid to a Hindu or a Muhammadan or an official member" be added to the clause proposed in the last amendment, or, if that clause be not carried, then to section 93 (*now* 100), being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Ranajit Sinha, Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apar.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 11.

The Hon'ble Mr. Buckley.
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The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH did not vote.

So the amendment was lost.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the word "twenty" be substituted for the word "thirty-two" in line 2 of section 93 (*now* 100), and that the word "ten" be substituted for the word "sixteen" in line 4 of the same section.

He said:—"I understand that a fee of twenty rupees is paid by the Port Trust for attendance at each meeting. I moved this amendment in the Select Committee, and I think I nearly carried it. There was a strong feeling in favour of the reduction of the amount of the fee following the precedent followed by the Port Trust."

The motion was put and agreed to.

The Hon'ble Mr. APCAR's motion that in section 93 (*now* 100) the words "and every member of a Sub-Committee a fee of sixteen rupees" and the words "or Sub-Committee" be omitted, was then put and lost.

The Hon'ble Mr. APCAR's motion that in section 93 (*now* 100), after the words "is transacted" the words "and which he attends from the beginning to the end thereof," be inserted, was then put and agreed to.

The Hon'ble MR. APCAR's motion that for proviso (a) to section 93 (*now* 100) be substituted the words "no more than one fee shall be paid to any member for his attendance at all such meetings in any one week" was then put and lost.

The Hon'ble MR. APCAR's motion that in section 93 (*now* 100), after clause (b), the following be added—

- "(c) the fee shall be payable to a Commissioner appointed under section 7, sub-section (1a) [*now* section 8, sub-section (2)], clauses (a), (b) or (c), and to no other;
- (d) no fee shall be payable to any Commissioner who is in receipt of a salary from the Government,"

was then put and lost.

The Hon'ble MR. APCAR's amendment that in section 93 (*now* 100), after the words "is transacted" the words "and which he attends from the beginning to the end thereof" be inserted, having been adopted, the Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew a similar motion standing in his name.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA's motion that to section 93 (*now* 100) the following be added as proviso (c), namely :—

- "not more than four fees shall be paid to any member for his attendance at all meetings in any one month;"

was put and lost.

The Hon'ble MR. APCAR's motion that in section 93 (*now* 100) the words "and every member of a Sub-Committee a fee of sixteen rupees" and the words "or Sub-Committee" be omitted having been lost, the Hon'ble RAJA RANAJIT SINHA, BAHADUR, OF NASHIPUR, by leave of the Council, withdrew the similar motion standing in his name.

The Hon'ble BABU BOIKANTA NATH SEN, by leave of the Council, withdrew his motion that the following be added to section 93 (*now* 100):—

- "(c) not more than thirty fees shall be paid to any member for his attendance at all meetings in any one year."

The Council was then adjourned to Monday, the 18th September, 1899.

CALCUTTA ;

The 16th January, 1900.

F. G. WIGLEY,

Assistant Secretary to the Govt. of Bengal,
Legislative Dept.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Monday, the 18th September,
1899.

Present:

The Hon'ble SIR JOHN WOODBURN, K.C.S.I., Lieutenant-Governor of Bengal,
presiding.

The Hon'ble MR. W. B. OLDHAM, C.I.E.

The Hon'ble MR. R. B. BUCKLEY.

The Hon'ble MR. C. W. BOLTON, C.S.I.

The Hon'ble MR. E. N. BAKER.

The Hon'ble RAI DURGA GATI BANERJEA, BAHADUR, C.I.E.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. F. F. HANDLEY.

The Hon'ble MR. F. A. SLACK.

The Hon'ble KHAN BAHADUR MAULVI DELAWAR HOSAIN AHMED.

The Hon'ble BABU JATRA MOHAN SEN.

The Hon'ble MR. T. W. SPINK.

The Hon'ble RAJA RANJIT SINHA, BAHADUR, OF NASHIPUR.

The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH, C.I.E.

The Hon'ble MR. D. F. MACKENZIE.

The Hon'ble MR. J. G. APCAR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BOIKANTA NATH SEN.

The Hon'ble BABU SURENDRANATH BANERJEE.

CALCUTTA MUNICIPAL BILL.

The Hon'ble Mr. BAKER said:—"I have been in communication with the Hon'ble Dr. Asutosh Mukhopadhyaya, and we have come to an agreement upon his amendments relating to sections 88 and 89A (now 95 and 96)."

SECTION 95.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA withdrew the following motions of which he had given notice, namely:—

(1) that in section 88, sub-section (3b) [now section 95, sub-section (6)], for lines 3 to 8, the following be substituted, namely:—

"(i) Commissioners elected under section 7 (now 8), sub-section (1), or appointed under section 52B (now 59), sub-section (1), and

"(ii) Commissioners appointed under section 7, sub-section (1a) [now section 8, sub-section (2)]."

(2) that at the end of section 88, sub-section 3(b) [now section 95, sub-section (6)], be added "but from no Sub-Committee shall the representatives of either of the two classes of Commissioners be entirely excluded";

and substituted for them the following motion:—

SECTION 96.

That the following amendments be made in section 89A (now 96), namely:—

(1) omit "3(b)" in line 1 of sub-section (5);

(2) insert the following sub-section after sub-section (5):—

"(3a) [now (4)] The Local Government may make rules declaring what proportion of—

(i) Ward Commissioners, and

(ii) Commissioners appointed under section 7, sub-section (1a) [now section 7, sub-section (2)], respectively,

shall be nominated to be members of every or any special Committee:

Provided that every special Committee shall be so constituted as to contain not less than one representative of each of the two classes of Commissioners referred to in this sub section."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I shall briefly explain to the members of this Council what this amendment in substance is. My amendment originally was with reference to section 88, sub-section (3b) [now section 95, sub-section (6)], and my contention was that the division there into three classes was not quite logical. After discussing the matter with the Hon'ble Member in charge of the Bill, we came to the conclusion that it was not perhaps strictly logical, but that a better arrangement could not be devised. We also found that that arrangement was by implication included in section 89A, sub-section (3) [now section 95, sub-section (5)], under which sub-section 3 (b) of section 88 [now section 95, sub-section (6)], applies to every Special Committee. Now these Special Committees are to be appointed by the Corporation, and the three classes referred to as the constituent elements of the General Committee are by implication adopted as the constituent elements of the Corporation. But it so happens that the constituent elements of the General Committee are not identical with the constituent elements of the Corporation. But the Government of India in paragraph 20 of their despatch say that these Committees must be truly representative of the elements of which the General Committee and the Corporation are, respectively, composed. Therefore it becomes necessary not to incorporate by implication section 88, sub-section (3b) [now section 95, sub-section (6)], but to include a distinct provision in section 89A, sub-section (3) [now section 95, sub-section (5)]. That distinct provision is practically my amendment. I have now moved it. The Hon'ble Member in charge of the Bill has pointed out to me that the classification I proposed would hold good in the case of the Corporation, but not in the case of the General Committee, and that therefore it was desirable to leave section 88 (now 95) alone, and to insert a new provision in section 89A (now 96). The terms of the amendment are practically identical with the amendments numbered 44 and 45 on the List of Business."

The sections of the Bill having, under the direction of the Council, been re-numbered, the present number of each section is inserted in brackets, wherever the new numbering differs from the old.

The Hon'ble Mr. BAKER said :—"The Hon'ble Member has explained it quite clearly and quite correctly. In the General Committee there are three groups of constituents and in the Corporation there are only two. That is the reason why it is necessary to have a distinction between the rules determining the composition of the Sub-Committees which have to correspond to the composition of the General Committee, and the composition of the Special Committees which are to correspond with the Corporation. The amendment moved by the Hon'ble Member gives effect to that, and I think it may be accepted."

The Hon'ble Mr. APCAR said :—"Sir, as I understand it, this relates to sub-section 3 (b) of section 88 [now section 95, sub-section (6)], a sub-section which was carried by the casting vote of His Honour the President, and, as I understand my hon'ble friend the Member in charge of the Bill, it is a sub-section which will not be put into operation. Under these circumstances I have nothing to say."

The motion was then put and agreed to.

SECTION 101.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "unless in any case they consider that inconvenience or unreasonable delay would result," in sub-section (2) of section 95 (now 101) be omitted, and that in their place the following words be substituted :—

"without unnecessary delay."

The Hon'ble Mr. APCAR moved that in section 95 (now 101), sub-section (2), for the words "unless in any case they consider that inconvenience or unreasonable delay would result" the words "without unreasonable delay" be substituted.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved that in section 95 (now 101), sub-section (2), all the words after "requisitions" be omitted and the words "without unreasonable delay" be added.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 95 (now 101), sub-section (2), the words "unless in any case they consider that inconvenience or unreasonable delay would result" be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE said :—"Sir, yesterday we adopted a section in the Bill making it a statutory obligation on the part of the Chairman to send to the Local Government extracts from the proceedings and minutes of the Corporation, the General Committee and the Sub-Committees. That is a statutory obligation, and surely, Sir, when a requisition is made by the Corporation to the General Committee to submit to the Corporation extracts from its proceedings, such a requisition should be complied with, and it should not be open to the General Committee to raise objections. Sir, I may just point out that this amendment stands on a very different footing from the amendment which I moved the other day and upon which I elicited an adverse vote from this Council. That was an amendment which sought to appoint Committees of the Corporation for the purpose of instituting enquiries and submitting reports with regard to all matters pertaining to the general administration of the Municipality. This amendment stands upon a totally different footing. Its object is that, when a requisition of the kind referred to by me is addressed by the Corporation to the General Committee and Sub-Committees of the General Committee, it should be complied with without any kind of delay and without excuses being raised. I may point out that my amendment follows section 65 of the Bombay Act, which says—

"The Corporation may at any time call for any extract from any proceedings of the Standing Committee or of any Committee or Sub-Committee constituted under this Act and for any return, &c., and every such requisition shall be complied with without unreasonable delay."

"I hope, Sir, having regard to the facts I have just submitted, the Council will see its way to accept this amendment."

The Hon'ble Mr. BAKER said:—"I strongly oppose this amendment, Sir, and I shall oppose every amendment which seeks to place either the General Committee or the Chairman in a position of general subordination to the Corporation. In the original Bill the power to call for extracts from the proceedings of the General Committee was confined to those matters which are reserved by the Act for decision by the Corporation, and it was also provided that the General Committee should comply with such requisitions without unreasonable delay. In the Select Committee this was changed at the instance, if I remember right, of the Hon'ble Members who represent the Corporation. They said that the power to call for extracts from the proceedings of the General Committee should be made general, and should apply to all the proceedings of the General Committee on all subjects, whether they were reserved by law for the decision of the Corporation or not. As a consequence of that decision we gave to the General Committee the discretion to refuse to forward extracts in cases in which they thought that inconvenience or unreasonable delay would be occasioned thereby. The Hon'ble Member now both wants the power to call for extracts relating to all matters whatsoever, and also to withdraw from the General Committee the discretion which we allowed to them in consequence of that alteration. This amendment assumes that the General Committee is subordinate to the Corporation. Now, Sir, that is not the case. The General Committee is only subordinate to the Corporation in matters which are reserved by law for decision by the Corporation. I admit that the General Committee would ordinarily do well to comply with these requisitions. They ought, as a rule, to furnish the Corporation with information upon all matters regarding which they may desire to have information. But, as the General Committee is within its own sphere independent of the Corporation, it is inconsistent with that position that the Corporation should have the power to compel them to furnish any extracts from any of their proceedings whatsoever without limitation. I object strongly to take away the discretion of the General Committee by imposing upon them a statutory obligation to compel them to comply with these requisitions. The Hon'ble Member said that this is the rule in Bombay. That is not an argument which impresses me in the least. We are not introducing here the whole of the Bombay system. We have made many alterations and additions, and we are only introducing those provisions from the Bombay Act which we believe are likely to be beneficial in Calcutta. I would remind the Council that the Hon'ble Member only quotes the Bombay Act when it happens to suit his case. Last week we were discussing the financial powers of the General Committee in respect of contracts. In this Bill we have provided that the General Committee should only have power to sanction contracts up to Rs. 10,000, and that anything above that sum shall require the sanction of the Corporation, and that the Corporation alone shall have the power to accept tenders in excess of that figure. In Bombay what is the corresponding provision of the law? In Bombay, Sir, nothing goes to the Corporation at all. The General Committee sanction everything in excess of Rs. 5,000. No matter how high the amount of the expenditure may be, the power to sanction, the power to accept tenders, rests exclusively with the General Committee. I need hardly say that, when we were dealing with those sections, the Hon'ble Member made no reference to the Bombay Act."

The Hon'ble Mr. APCAR said:—"I have an amendment standing in my name which is identical with my hon'ble friend's. I think it will be convenient if I take that amendment now. My hon'ble friend's amendment is to substitute the words 'without unnecessary delay'. My amendment is to substitute the words 'without unreasonable delay,' so that the amendments are practically the same, only I am following the terms of the Bombay Act. I have been much entertained by the Hon'ble Member in charge of the Bill, when he had the boldness to say that my hon'ble friend to my left quotes the Bombay Act when it suits his purpose. Well, if that Act were given in its entirety for us here, in Calcutta, it would be accepted by my hon'ble friend and myself. But I do not think my hon'ble friend is singular in quoting the Bombay Act when it serves his purpose, because I have heard that Act quoted by my hon'ble friend in charge of the Bill when it suits his purpose, and set it aside when it suits his

purpose; and, so far as those who are opposing this Bill are concerned, when we have sought any divergence from the Bombay Act, it has been based on the experience that we have gained in the working of the Calcutta Municipality, and it must not be lost sight of that we are changing the law from one very widely different, with very much wider powers vested in the Corporation than have ever existed in Bombay, so that it is not unnatural that we, having had experience of the working of the present Act, seek, where we find that it is advantageous, to fall back upon it. In connection with this amendment I beg the Council to remember that although there is no statutory obligation on the Chairman to supply copies of the proceedings of the General Committee to the members of the Corporation, now they have a right to these copies. They have a right to copies of these proceedings because every matter which comes up before them is one which is under their control, and it is required that they should have full information with regard to such matters, so that the position now is very widely different from what is now desired by the Hon'ble Member in charge. The fall is so great, that I think it might be broken by, at all events, allowing the Corporation to see what is being done on any question upon which they may desire to have information. Here, too, all that is wanted is that information should be given. We have the General Committee who are going to work with closed doors, and I do not think it is advisable by any means, and the contrast is so marked that I am surprised it has been put so strongly that information should not be permitted to come out in the ordinary and regular way. My hon'ble friend, the Member in charge of the Bill, says he will not allow any suggestion that the General Committee are to be put in subordination to the Corporation."

The Hon'ble Mr. BAKER said:—"In general subordination to the Corporation was what I said."

The Hon'ble Mr. APCAR said:—"In general subordination to the Corporation. But, Sir, this is not in any way placing them in subordination, either general or otherwise. The Corporation cannot direct the General Committee to do anything different from what they have done. What we seek is that they should supply the Corporation with information with regard to matters which may have excited great general interest, and I can see no reason why such a power should be regarded with any kind of jealousy. The General Committee would be doing, as I am sure they will, everything according to that which is right in their own eyes. Why should they be afraid of publicity? But, so far as this particular section is concerned, the main objection is based upon the ground of inconvenience. Well, Sir, why will it be inconvenient to them to allow any matter in which they have taken a certain line to be made public? It cannot be inconvenient in the ordinary sense. There can be no difficulty in supplying these extracts, because all that we seek is that they may be available for the use and for the information of the Corporation who represent the public. So that inconvenience in the sense that it would be difficult to supply these extracts does not enter into the question at all. They must supply all the information to Government; then why should they not supply copies of the extracts from their proceedings, which they are compelled to supply to Government, also to the Corporation? It is under these circumstances that I hope this amendment will be accepted."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"The position taken up by the Hon'ble Member in charge of the Bill, I am sorry to confess, is not very intelligible to me. I have taken down the words which he used. He said that this amendment is based upon the assumption that the General Committee is subordinate to the Corporation, and that he would strongly object to anything which would place the General Committee in a position of general subordination to the Corporation. I regret to say that I cannot make out that any such subordination necessarily follows, if my amendment is accepted. Let us look, for instance, at section 91A (*now* 98), which deals with the inspection of the minutes and reports of proceedings of the Corporation. It says:

'The minutes referred to in section 90 (*now* 97), and the full reports (if any) of the proceedings of meetings of the Corporation, shall, at all reasonable times, be kept open at the

municipal office to the inspection of any Commissioner without charge, and to any other person on payment of a fee of eight annas;

so that it seems that any stranger, any member of the public, may get copies of the proceedings of the Corporation upon the payment of a nominal fee. Can it be seriously argued, because this is allowable, that therefore the Corporation is in a position of general subordination to the public? Take, again, section 92 (*now 99*). Section 92 (*now 99*) makes it compulsory on the Chairman to forward to the Local Government a copy of the minutes of the proceedings at each meeting of the Corporation, the General Committee and every Sub-Committee and Special Committee within ten days from the date on which such meeting took place. Is it contended that the General Committee is hereby placed in a position of general subordination to the Local Government, and that the Local Government may, whenever it so chooses, nullify the proceedings of the General Committee? Then, Sir, I submit that the position taken up by the Hon'ble Member in charge of the Bill is inconsistent. If his contention is that the General Committee will be placed in a position of general subordination, in case it is allowable for the Corporation to call for copies of their proceedings, then the better course to follow would be to omit section 95 (*now 101*) altogether. In the first place, you say that the Corporation may at any time require the General Committee to furnish them with any extracts from any of the proceedings of any Committee or Sub-Committee, and also with any returns, statements, accounts or reports concerning or connected with any matter dealt with by the General Committee or by any Sub-Committee; and in the same breath, you add, most inconsistently, that the General Committee shall comply with all such requisitions, unless in any case they consider that inconvenience or unreasonable delay would result. I confess I do not see the force of the words 'inconvenience and unreasonable delay'. Inconvenience to whom? Certainly not inconvenience to the Corporation, because the Corporation would be the best judge in that matter. Inconvenience to the General Committee? I cannot conceive of any case in which the mere fact of furnishing copies of the proceedings to the Corporation will place the General Committee in an inconvenient situation, and I shall be very much obliged to the Hon'ble Member in charge of the Bill if he would give a concrete instance."

The Hon'ble MR. BAKER said:—"I mean of course inconvenience to the public."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA continued:—"I am surprised at the answer. I cannot persuade myself to believe that any inconvenience to the public can possibly result from such a procedure. I cannot, by any stretch of the imagination, think of such a concrete case. But I can very well imagine that publicity would be somewhat inconvenient to the General Committee if their actions are of a character which will not bear the light of day. As to unreasonable delay in getting copies of the proceedings, surely the Corporation would not complain of that. They will welcome them on the principle—better late than never. I venture to think, therefore, that the whole thing is absolutely indefensible, unless, indeed, the Hon'ble Member in charge of the Bill is prepared to take up the position that a veil of secrecy should be jealously drawn over the possible misdeeds of the executive."

The Hon'ble BABU JATRA MOHAN SEN said:—"I have a similar amendment to propose to section 95 (*now 101*), viz., that in sub-section (2), the words 'unless in any case they consider that inconvenience or unreasonable delay would result' be omitted. The Hon'ble Member in charge of the Bill has referred us to what passed during the meetings of the Select Committee. We are not concerned with what passed there; but all that we need say is whether this provision is or is not a salutary provision, whether power should be given to withhold any information which is required by the Corporation, and whether it will not create friction between two authorities which is the anxious desire of Government to avoid. The General Committee will have the power of keeping the Corporation in ignorance of their proceedings, which certainly ought not to be allowed. In order to see that the authorities work harmoniously, it is desirable that a provision of this kind should be made, giving every facility

to the Corporation to receive any information they may desire to obtain in matters of this kind. I may add that a provision of this kind would be very satisfactory, and I think the Corporation should have an opportunity of discussing what took place in the General Committee. I have not proposed to add the words 'unreasonable delay,' lest it may be inferred that the General Committee may take offence; that is why I have not added those words. I have merely asked them to submit information, taking it for granted that that information would be forthcoming within a reasonable time."

The Hon'ble Mr. OLDHAM said:—"Sir, notwithstanding what Hon'ble Members have said on the subject, the general belief both in business and in official circles is that the visible sign and badge of subordination is that of its being compulsory on one authority to report to another authority, whether the superior authority has power to act on that report or otherwise. Considering, therefore, that our aim is to establish three co-ordinate authorities, if one of these authorities were always under compulsion to report to one of the others (and notwithstanding the provision which has been made that there should be, as far as possible, a moral obligation to report), it is absolutely necessary to retain in the law the definition which marks the independence of the General Committee and the fact that it is a co-ordinate authority. The Hon'ble Member for the University quoted, as an instance of a similar position, the position of the General Committee to Government. He said:—'I think surely the General Committee is not subordinate to Government.' My idea of the constitution under the Bill and the control under the sections which we passed the other day is quite contrary to that. It may not appear to be subordinate to Government, but the fact is that the General Committee will be thoroughly subordinate to Government in effect, and I think that has been most effectively secured. Then, Sir, the Hon'ble Member asked if we could give a concrete instance of the inconvenience which would result from this compulsory power of reporting being exercised. I think there are two recent instances. I take first the instance of the Town Hall. I think, if, while the enquiries into that very delicate matter had been going on, any superior authority had insisted upon a report being furnished to them for their information, there would have been the greatest possible amount of inconvenience to the public and to the General Committee, and, if the Corporation had insisted upon reading the lengthy papers of that enquiry, the effect would have been that of protracting and impeding the enquiry. Another instance which comes to my mind is the question of the settlement of the Salt Lakes country. I think, Sir, that, if a report had to be submitted to Government while that enquiry is in the state that it is now in, there would be considerable trouble and inconvenience to all concerned."

The Hon'ble Mr. MACKENZIE said:—"I desire to confirm what the Hon'ble Mr. Oldham has said of the custom in business circles. It is unknown for shareholders to have the power of calling for the proceedings of Boards of Directors. It would be highly inconvenient that such should be the case. The Directors submit their report from time to time, and with that the shareholders are satisfied. I have no doubt that the General Committee will submit these proceedings when desirable, but I think in practice it should not be made a statutory obligation for them to do so."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I must be permitted to express the regret that I feel at the very decided attitude which the Hon'ble Member in charge of the Bill has taken up with regard to this amendment, and indeed every amendment which may be said to hang upon it. The position so unfortunately taken up by the Hon'ble Member shuts out that spirit of compromise which, I submit, Sir, ought to be the dominating spirit of all our debates. My hon'ble friend was very emphatic, and said in his own very emphatic way—I took down his words—'I shall oppose every amendment which places the General Committee and the Chairman in a position of general subordination to the Corporation.' Sir, I venture to say that in very many matters both the Chairman and the General Committee are subordinate to the Corporation. For instance, in respect of all matters connected with financial considerations,

the Chairman and the General Committee are subordinate to the Corporation. Sir, I am perfectly well aware that in other matters the General Committee and the Chairman are independent of the Corporation, and this independence is maintained, not only in the municipal system as provided by this Bill, but is also to be found in the Bombay system. And, Sir, we have precisely the same section in the Bombay Act which I ask you to incorporate in the Bill. It does not, and cannot, interfere with the independence of the General Committee in any way. We have in Bombay the system of co-ordinate authorities as we have here. In Bombay the General Committee is independent of the Corporation as the General Committee will be independent of the Corporation under this law. Yet in Bombay they have this section,—the section which I want the Council to adopt,—and it does not interfere in any way with the independence of the General Committee. Sir, my friend has referred to my quoting the Bombay Act at my convenience, and not quoting it when it does not suit me. I think, Sir, we have both been following the same procedure. He, too, has been quoting the Bombay Act when it suits his convenience, and he has been discarding it when it does not suit his convenience. My friend has referred to the sections relating to contracts. I freely admit that those sections are in advance of the Bombay Act. But I am willing, Sir, to give up these sections and every other section in this Bill which may be in advance of the Bombay Act, if my hon'ble friend will adopt the Bombay Act in its entirety. I say this in the full consciousness that I am voicing the sentiments of the community to which I have the honour to belong. We are fully prepared to accept the Bombay Act with all its advantages and disadvantages. Is my hon'ble friend willing to give us the Bombay Act? He shakes his head: he is not prepared to accept my offer. It is, Sir, therefore useless to make a complaint against us that we quote the Bombay Act when it suits our purpose. He does precisely the same thing. I have been following his example—his great example—in this matter, and I am sure he will not find fault with me for so doing. I should very much regret it if the effect of my amendment would be to place the General Committee in a position of general subordination to the Corporation. You have already put it in a position of general subordination; because in the first part of section 95 (1) (now 101 (1)) you say "the Corporation may at any time require the General Committee to furnish them with any extract from any proceedings of such Committee," &c. It is only a superior body which can address an inferior body in that way with respect to any information which the latter may have at its disposal. Therefore, you have already placed the General Committee by this section in a position of subordination. I only want that in placing the General Committee in this position there should not occur those difficulties, those elements of friction, which might arise if any discretion were left to the General Committee. My hon'ble friend (Mr. Oldham) has referred to the case of the Town Hall, and to the case of the Salt Water Lakes which at the present moment is being investigated by a Committee. He says it would be highly inconvenient if, while that Committee was making its enquiries, the Corporation were to ask for any papers. I quite agree with that; but, Sir, I think we may trust to the good sense of the Corporation in this matter. I am confident that in the records of the Corporation you will not find one single instance where the Corporation has exercised its powers of supervision in such a way."

The Hon'ble MR. OLDHAM said :—" I was replying to the Hon'ble Member for the University on that point."

The Hon'ble BABU SURENDRANATH BANERJEE said :—" Yes, I understand that, but what I say is that, as far as matters of this kind are concerned, you can trust to the good sense of the Corporation. As I said the other day and now repeat it, when a large number of persons meet together for the transaction of public business, there is a solemn sense of public duty pervading the assembly. That sense of public duty will prevent the Corporation from abusing the power we propose to bestow upon it. I am perfectly certain that, if this power be given to the Corporation with the safeguards with which it is proposed to fence it round, it will be rightly used."

The Hon'ble Mr. APCAR, in reply, said:—"Sir, with regard to the concrete instances which have been suggested by my hon'ble friend Mr. Oldham, so far as I follow his illustrations, he contends that there would be inconvenience with regard to the point of time when the demand may be made by the Corporation, that is to say, when the General Committee might be required to submit any information. But, Sir, it is not intended that in the middle of an enquiry there should be information with regard to it supplied, or that these extracts of proceedings would then be called for. All that is required is that, when certain proceedings have terminated, information or extracts from proceedings should be furnished. The only question that would arise would be on the ground of delay, and the question would be whether it would be unreasonable delay, and it would not be unreasonable delay if the General Committee desired that there should be delay in submitting the proceedings until after the Sub-Committee, or whatever body of persons may be making this enquiry, had brought the enquiry to a termination. So that, in regard to the instances given, I am not very much impressed by them, for the reason that it is not contended that the proceedings or the extracts shall ever be submitted while enquiries are in progress, or while negotiations are pending. There would be no inconvenience when the final result had been arrived at, but it only could arise when the Committee may be in the middle of their enquiry. Well, as I have said, the question depends on delay, and it would not be unreasonable delay if information of this sort was not given till the enquiry was closed. We have had the Bombay Act in operation for a long time. If there were any serious risk in removing the disqualification we now seek to take away by our amendments, surely there might be some illustrations given us, so as to bring it home to us, that our demand is not one which should be complied with. I have heard no suggestion of this kind, but, on the contrary, I find that it would be for the public benefit that all information desired should be available. There is no reason that I have heard that has induced me in any way to think that the proposals we urge are such as should not be granted.

"With regard to Companies, why that is a matter between the shareholders themselves. They are hardly identical with Corporations, and I do not know that the analogy is applicable to the present question. But, if any shareholder desires information, in the result it is given to him; and I am not asking for information at any moment of time, but only after all negotiations and enquiries have terminated. The information is asked for on behalf of the public, and I hope our amendments on this occasion will not be refused."

The Hon'ble BABU SURENDRANATH BANERJEE's motion being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen
The Hon'ble Babu Boikanta Nath Sen
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The motions by the Hon'ble Mr. APCAR, the Hon'ble Dr. ASUTOSH MUKHOPADHYAYA and the Hon'ble BABU JATRA MOHAN SEN being then severally put, the Council divided in the same way.

So the amendments were lost.

NEW SECTION.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following section be inserted after section 95 (now 101):—

“95A. (1) The Corporation may at any time require the Chairman—

- (a) to produce any record, correspondence, plan or other document which is in his possession or under his control as Chairman, or which is recorded or filed in his office or in the office of any municipal officer or servant subordinate to him;
- (b) to furnish any return, plan, estimate, statement, account or statistics concerning or connected with any matter appertaining to the administration of this Act or the municipal government of Calcutta; or
- (c) to furnish a report by himself, or to obtain from any head of a department subordinate to him and furnish, with his own remarks thereon, a report upon any subject concerning or connected with the administration of this Act or the municipal government of Calcutta.

(2) Every such requisition shall be complied with by the Chairman without unreasonable delay; and it shall be incumbent on every municipal officer and servant to obey any order made by the Chairman in pursuance of any such requisition:

Provided as follows:—

- (i) if, on such a requisition as aforesaid being made, the Chairman declares that immediate compliance therewith would be prejudicial to the interests of the Corporation or of the public, it shall be lawful for him to defer such compliance until a time not later than the second ordinary meeting of the Corporation after he has declared as aforesaid;
- (ii) if at such meeting, or any meeting subsequent thereto, the Corporation repeat the requisition, and it then still appears to the Chairman inexpedient to comply therewith, he shall make a declaration to that effect, and thereupon it shall be lawful for the Corporation to elect three Commissioners who shall form a Committee who shall engage to keep secret, save as hereinafter provided, the existence and purport of such documents and matters as may be disclosed to them; and to the said Committee the Chairman shall be bound to make known and to disclose all writings and matters within his knowledge, under his control, or available to him, and embraced within the requisition; and the said Committee, having taken cognisance of the information, writings and matters so laid before them, shall determine, by a majority in case of difference, whether or not the whole or any part, and which part, if any, of such matters ought to be disclosed to the Corporation or kept secret for a defined time, which decision shall be conclusive and shall be reported to the Corporation at their next ordinary meeting, at which meeting the Chairman shall be prepared to produce documents and to make any report or statement requisite to give effect to the decision of the Committee when called on to do so by the Corporation.”

The Hon'ble MR. APCAR moved that the following section be inserted after section 95 (now 101):—

“95A. (1) The Corporation may at any time require the Commissioner —

- (a) to produce any record, correspondence, plan or other document which is in his possession or under his control as Commissioner, or which is recorded or filed in his office or in the office of any municipal officer or servant subordinate to him;
- (b) to furnish any return, plan, estimate, statement, account or statistics concerning or connected with any matter appertaining to the administration of this Act or the municipal government of Calcutta; or
- (c) to furnish a report by himself, or to obtain from any head of a department subordinate to him and furnish, with his own remarks thereon, a report upon any subject concerning or connected with the administration of this Act or the municipal government of Calcutta.

(2) Every such requisition shall be complied with by the Commissioner without unreasonable delay; and it shall be incumbent on every municipal officer and servant to obey any order made by the Commissioner in pursuance of any such requisition:

Provided as follows:—

- (i) if, on such a requisition as aforesaid being made, the Commissioner declares that immediate compliance therewith would be prejudicial to the interests of the Corporation or of the public, it shall be lawful for him to defer such compliance until a time not later than the second ordinary meeting of the Corporation after he has declared as aforesaid;

(ii) if at such meeting, or any meeting subsequent thereto, the Corporation repeat the requisition and it then still appears to the Commissioner inexpedient to

Or
and for the General Committee to elect one of their body and for the two Councillors so elected to select a member of the Corporation, who together

comply therewith, he shall make a declaration to that effect, and thereupon it shall be lawful for the Corporation to elect one Councillor [who with the President of the Corporation and the Chairman of the General Committee (or, if the President of

the Corporation is also Chairman of the General Committee, with the said President and one member of their own body elected by the General Committee)] shall form a Committee who shall engage to keep secret, save as hereinafter provided, the existence and purport of such documents and matters as may be disclosed to them; and to the said Committee the Commissioner shall be bound to make known and to disclose all writings and matters with his knowledge, under his control, or available to him, and embraced within the requisition; and the said Committee, having taken cognizance of the information, writings and matters so laid before them, shall determine, by a majority in case of difference, whether or not the whole or any part, and which part, if any, of such matters ought to be disclosed to the Corporation or kept secret for a defined time, which decision shall be conclusive and shall be reported to the Corporation at their next ordinary meeting, at which meeting the Commissioner shall be prepared to produce documents and to make any report or statement requisite to give effect to the decision of the Committee when called on to do so by the Corporation :

Provided always that in the event of the two Councillors elected as aforesaid not agreeing in the selection of a third person to act with themselves as aforesaid, then it shall be lawful for the Corporation at their next meeting, whether ordinary or special, and with due notice in respect of such matter, to elect a Councillor who, on such election, together with the two Councillors previously elected, shall form a Committee for the purpose above mentioned "

The Hon'ble BABU SURENDRANATH BANERJEE said:—"This section proposes that the Corporation should have the right of requesting the Chairman to furnish it with any papers which may be in the possession of the Chairman, and it will be obligatory upon him to submit such papers to the Corporation. If the Chairman is of opinion that in the interest of the public such papers should not be laid before the Corporation, then he may decline to do so; and if the Corporation again repeats its request, then a certain procedure is suggested, viz., three Commissioners are to be appointed, they are to confer with the Chairman upon the matter, the Chairman is to disclose the facts of the case to them, and the Corporation will be bound by the decision of the three Commissioners. Sir, I do not see any reason why this amendment should not be accepted. It is perfectly consistent with the other provisions of the Bill. It is not derogatory to the authority of the Chairman; it does not interfere with his every-day work. The Chairman remains an independent municipal authority; the Corporation also remains an independent municipal authority. All that is proposed is that the Corporation should have power to require the Chairman to submit papers which the Corporation may wish him to submit. That is the Bombay section. There the system of co-ordinate authorities exists, and yet a provision like this has not been found in any way to interfere with the smooth working of the municipal system in Bombay. I trust that my hon'ble friend will not in connection with this amendment take up that decisive attitude to which I previously referred with some regret. I appeal to my friend to look at the matter from the standpoint of public interest rather than from the standpoint of official subordination. The question which we have to decide is whether, if a section like this finds a place in the municipal law, it would be placing the Corporation in a better position than the Corporation now is, to discharge the various duties which will be entrusted to it under the Bill. The object of the amendment is not the subordination of the Chairman. The object is to place the Corporation in possession of information which the Corporation may wish to have in order that the Corporation might be in a position to discharge the grave and responsible duties which will be imposed upon it under the law. I do not seek to exalt the Corporation. I want to place the Corporation in a position to discharge satisfactorily the important duties entrusted to it. If the Corporation has the information, it will be able to discharge these duties satisfactorily. If it has not the information, it will not be able to do justice to them. My hon'ble friend Mr. Oldham said that reporting is a

visible badge of subordination. This is not a question of reporting at all; it is a question of giving information. Sir, I hope my hon'ble friend will see his way to accept this amendment."

The Hon'ble Mr. APCAR said:—"My amendment, Sir, is slightly different from my hon'ble friend's. In the middle of proviso No. 2 my hon'ble friend suggests a committee of three in the case of the Chairman declaring that compliance with the requisition would be inconvenient. My hon'ble friend thinks this Committee should be composed of three members of the Corporation. My suggestion is that one of the three should be elected by the General Committee, another of the three by the Corporation, and that these two should select a third person to complete the Committee; and there is a proviso to meet the contingency of the two who have been elected, one by the Corporation and the other by the General Committee, not agreeing as to the third. Then in such a contingency I propose that it shall be lawful for the Corporation at their next meeting—whether ordinary or special—to elect a third person to form the complement of the Committee. I hope that with regard to this section the Hon'ble Member in charge of the Bill will not adopt the uncompromising attitude that he assumed in regard to the last amendment. Under the Bill, as it is framed, no information is available at all with regard to those duties which are set apart for the Chairman to perform. Under section 95 (*now* 101), to which we have just now moved amendments, the Corporation may demand information, and then it is left to the discretion of the General Committee to give such information or not. But with regard to the Chairman's duties, it is a closed book. The public cannot in any way obtain any information with regard to what he may have been doing. Sir, it is not a question, I assure my hon'ble friend, of in any way seeking to override the Chairman, nor does the question arise here with regard to the subordination of the Chairman. It is in the public interest that this amendment is sought to be introduced, and even if in such circumstances a man is placed in subordination, having in view that the whole of this Act is for the public interest and not for the purpose of exalting any individual, that the Chairman ought to yield, and that all matters with which he may deal should be subject to information being supplied with regard to them. In the present Bill the whole attitude of Government is to keep the Corporation in the dark, if either of the so-called co-ordinate authorities desire to withhold information. I do not seek in any way to place any orders on the Chairman or to place him in subordination, but all I want is that, whatever he may be doing, it should be possible for information to be obtained with regard to it. I do not seek for any power under which any individual could move to gratify a personal whim. It is when the Corporation move as a body, when by a vote the Corporation require certain information, then that information should not be withheld."

The Hon'ble Mr. BAKER said:—"At first, Sir, I was disposed to think that it might have been possible to grant this power provided that my hon'ble friends had seen their way to limit the exercise of it, if they had agreed to confine themselves to matters reserved by law for the decision of the Corporation, and if they gave the Chairman power to withhold any paper or information in his discretion in the same way as is permitted to the General Committee. I said something to that effect to the Hon'ble Mr. Apear when he made a reference to me on the subject. Mr. Apear was unwilling to agree to that modification, and the matter dropped. Since then, the matter has been further considered by Government, and Government are now of opinion that this amendment cannot be accepted in any way, not even in the modified form which I at first thought would have been permissible. The right which my hon'ble friends seek to obtain is perfectly unnecessary. The Hon'ble Mr. Apear has said that there are no means by which the Corporation or the public can get any information as to the Chairman's acts. He said the Chairman's proceedings were a closed book. Well, Sir, that is entirely incorrect. The Chairman is President of the Corporation. He presides over the General Meetings. Every individual Commissioner has the right of interpellation, and it is open to any one of them or any number of them to ask the Chairman for any information upon any subject connected with the discharge of his duties, or connected with any branch of the municipal administration. The Chairman can answer these questions, he can

give all the information that he thinks fit, and I am certain that he will always give the utmost information in his power, which, in his opinion, may be given without detriment to the public interests. I was disposed to think, Sir, that in practice not very much evil would have resulted from granting this power in the limited way in which I first suggested it, because the party or section of the Commissioners which is likely to indulge in excessive interference will, I hope, not be strong enough to bear down the party of order unless they have a very strong case. But, as a matter of principle, I object to giving the Corporation the power to call for reports and explanations from the Chairman in matters which are outside their province, and which are within the discretion of the Chairman himself. It is true that the amendments do not expressly ask for power to pass orders on these reports or explanations. But what is the object of calling for information unless it is in contemplation to interfere or seek the right to interfere? If the Corporation is in need of information on any legitimate subject for any legitimate purpose, the Chairman will always be ready to furnish it to the utmost of his ability. I would remind the Council that what the hon'ble movers of the amendments really would like is to place both the Chairman and the General Committee in complete subordination to the Commissioners as they are under the existing Act."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Certainly not in connection with this amendment."

The Hon'ble MR. BAKER said:—"That is what the Hon'ble Members would really like. The Council has decided against them on that point, and I regard this amendment as an attempt to make some advance in that direction."

The Hon'ble MR. OLDHAM said:—"I have considerable sympathy with the objects of this amendment, though I must vote against it as it is formulated. My hon'ble friends have referred to the uncompromising attitude of the Hon'ble Member in charge of the Bill. I really think that was a little unjust. I must remind my hon'ble friend, Babu Surendranath Banerjee, that, as the Bill originally came down to us in Select Committee, there was no provision whatever for what section 95 (now 101) provides for, and that the Select Committee, headed by my hon'ble friend the Member in charge of the Bill, accepted the suggestion that such a provision should be made, and that was the compromise in this matter."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I freely acknowledge that in the Select Committee my hon'ble friend in charge of the Bill showed much more of the spirit of compromise than I am sorry to say he has exhibited in this Council. Sir, I am free to make the admission that many important points were conceded at the request of my hon'ble friend Babu Norendra Nath Sen and myself. I desire most frankly and freely to make that acknowledgment, subject to the reservation to which I have just referred. My hon'ble friend has observed that our object is to place the Chairman and the General Committee in a position of subordination to the Corporation. He has rightly interpreted our views, and, I think, Sir, the matter is so important that we ought to take advantage of every opportunity which presents itself to obtain some instalment of that principle which we conceive to be the basal principle on which the Calcutta Corporation ought to rest. That has been the principle upon which the Corporation of Calcutta has always been based. Since the institution of the Corporation in 1863 the authority of the Commissioners has always been paramount; and I have not the slightest hesitation in saying that it is because of this paramountcy of the Corporation that you see such improvement in the working of the Municipality of Calcutta. I think, Sir, you are embarking on an experiment which is full of peril. That being the view we have taken, viz., that it is important the Corporation should be the paramount authority, and that view having been vetoed by this Council, I think it is only our duty that we should obtain a modification of the principle so far as we can. I think, Sir, the Council will sympathise with us in the efforts we make in a lawful and constitutional way to obtain a modification, however slight it may be, of a principle which we consider to be the most essential principle in a body like the

Corporation of Calcutta. My friend has observed that it will always be open to the members of the Corporation to obtain information from the Chairman by asking questions. Well, Sir, I am in the habit of asking questions addressed to my hon'ble friend over there, and I desire to make a confession. I hope my hon'ble friends will not be offended if I say that sometimes the replies which I obtain in this Council represent the minimum of information with the maximum of words. I ask for information, but the information is whittled down, amidst a whirlwind of words. At other times I am better treated; but where is the guarantee, Sir, that the Chairman will not give the minimum of information with the maximum of verbiage? What guarantee is there that he will give full and satisfactory answers to the questions asked? There is no guarantee to that effect. Then, Sir, my hon'ble friend observes that the object of calling for information is to interfere. How are the Commissioners to interfere? You give them no opportunity to interfere. They cannot pass any resolution upon the information they call for; such a resolution would be out of order. And the Chairman is there; he will simply say as a point of order: 'I rule you out of order, because you are trespassing upon my constitutional privileges with which you have nothing whatever to do'; and he will bow and sit down, and there will be an end of the matter. Interference is absolutely out of the question. All that may be done is to exercise a little of that moral pressure which, supported by an enlightened and educated public opinion, ought to be the bulwark of a body like the Corporation of Calcutta. I am sorry my hon'ble friend is not prepared to accept this amendment, which, I understand, he was at one time willing to accept."

The Hon'ble MR. APCAR, in reply, said:—"Reference has been made by the Hon'ble Member to something he was willing to accept when I spoke to him on the subject. With regard to the concession he refers to, I do not see that there is any benefit to be derived from a provision of the kind. If we are entitled to discuss any matter, we are entitled to have such information as can be available for us in such matter, so that the concession my hon'ble friend was willing to make was really no concession at all, if our right of asking for information was limited to only such matters as those which we may have the right to discuss in the Corporation. I confess, however, I did not quite understand even so much in the brief conversation that I had with my hon'ble friend."

The Hon'ble MR. BAKER said:—"It was not a conversation; it was in writing."

The Hon'ble MR. APCAR said:—"Was it? Well, I had forgotten then. I thought it was a conversation. I know letters passed between us which led up to an interview when I spoke to the Hon'ble Member on the subject of this amendment. I went over to see my hon'ble friend on the subject, but I do not remember that anything was formulated in the manner in which my hon'ble friend states; but I accept what he says as correct. I ask to be permitted to say that I am not seeking a personal benefit in this question. I am asking for a concession for the benefit of the public. Whether I personally agreed, or did not agree, at a particular moment, to a proposal of the Hon'ble Member in charge of the Bill ought not to make any difference in the attitude of the Government in such an important question. I wish to speak for myself with regard to the object of this amendment which I propose. I seek publicity. I do not seek to put any one in a position of subordination to another authority at all. But I think that, if there is a matter which has excited interest, the Corporation should be able to act on behalf of the public in order to elicit information. I do not want anything more than that. I do not seek in any way to place the Chairman in subordination to any one. His place is to be defined in the Municipal law, and I must have regard for the law as it is enacted, and it is not my idea to get round the law in any sort or kind of way. My purpose is this: that there should be information available for the public in any matter in which there is public interest, and in this there is no desire or idea of placing any one in subordination. My hon'ble friend says that the Chairman will always be ready to give information. Well, my own experience has been different. On some points I have found the Chairman has not been ready to give information,

and he has resented an endeavour made to seek information. I remember with regard to a certain verandah question, with reference to which there was a standing order obtained after four years' struggle, through the assistance of Dr. Macleod, who had been Health Officer, that there should be no verandahs at all in thoroughfares which were less than a certain width; over footpaths in thoroughfares of a certain greater width there should be nothing more than simple uncovered verandahs. Whenever such questions were brought up for sanction, they were submitted with the remarks of the heads of the departments. In the particular instance to which I refer, the Engineer gave his opinion in a note. It was against the concession then asked for, but he was eventually induced to withdraw that opinion, and to write another of a very colourless character, but still not opposing. The Health Officer was so strongly against it that he refused, under any circumstances, to support the proposal of the Chairman; and when we sought to obtain access to this information, there was very strong resentment shown with regard to it by the Chairman.

"I may mention another question, also, the question of the Watgunge Depôt, in connection with which certain temporary arrangements were made in anticipation of the permanent Suburban Drainage scheme. The Engineer had obtained leave to Europe, and had been given one month's extra leave in order that he might consult with Mr. Baldwin Latham, the eminent Sanitary Engineer, with regard to this particular question. We had been advised by our Engineer so far back as 1890 that the pumping power at Palmer's Bridge Station was insufficient for Calcutta alone. Mr. Baldwin Latham had subsequently reported to the same effect. In the absence of the permanent Engineer, his *locum tenens* proposed a scheme under which the sewage of no less than 160,000 more inhabitants from the suburbs were to be thrown into the Calcutta drains to be lifted by the pumping engines which were thought insufficient for Calcutta alone. Then, when this matter was brought up before the Corporation, some of the Commissioners, who had been taking an interest in the question of the drains in Calcutta, were alarmed by the idea of having so much extra stuff being thrown into the Calcutta drains for the pumping engines to deal with. Information was sought, and it was given to this effect: that the pumping engines were able to dispose of this extra quantity, and in support of this there was, with regard to certain dates, information given as to the work that had been done by the engines. Two European Commissioners,—one an elected and the other a nominated Commissioner,—in the course of their study of the very difficult question of the drainage, went down to the pumping station, and found there the book with the reports that had been made with regard to these particular dates, and they accidentally found that there had been a mistake made in the returns that had been relied upon. That was very important information that was elicited, and had a great influence on the Commissioners when the voting on the subject came up for decision. This information will not be available under the law as framed by the Bill, but will be available if the amendment is accepted.

"Again, this Watgunge Depôt, the scheme of which had been rejected by the permanent Engineer as being one which for many engineering difficulties was inadvisable, was advocated by his *locum tenens* and strongly supported by the Chairman for adoption. Now, the permanent Engineer had been known to be opposed to the scheme, and an elected Commissioner, remembering this, sought for and was able to obtain information which showed that the Engineer had stated that the sewers between Kidderpore Bridge and Russa Road were insufficient to carry away the extra amount it was desired to put into them. When the permanent Engineer returned, he refused altogether to entertain the idea of this Watgunge scheme. It was a most important matter that we should have the information, in order that we might judge whether we should adopt this scheme which was pressed for by the Chairman.

"Under the law as proposed by the Bill, the Chairman may reply to an interpellation or he may not. There is no kind of statutory authority given to the Corporation to enable them to obtain any information. So in matters such as these, it is because of my experience in regard to the actual working of the administration that I ask for such powers as I now seek to

obtain for the Corporation. The interest of the public is of paramount importance, and it, surely, is their right to obtain important information affecting their welfare. It is not for the purpose of endeavouring to make the Chairman subordinate to the Corporation, unless indeed the Chairman must be allowed to do whatever he has once decided upon, whether he is right or wrong, even though he is about to act upon erroneous information and to the serious peril of the public, and any attempt to get bare information about what is being done is to be regarded as placing the Chairman in subordination, and the amendment is to be rejected on such a ground. In Bombay the information is granted, and there is no kind of jealousy with regard to such a subject as this. There is no idea entertained there that it is offensive to require the Chairman to give information about what he is doing. It is in the public interest alone that I seek the acceptance of this amendment. I do not want, by this amendment, in any way to make the Chairman's position different to that which has been deliberately conceived by Government to be his position under this Bill when enacted."

The motions being severally put, the Council divided in each case as follows:—

Ayes 5.

The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apar,
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 13.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee, Bahadur.
The Hon'ble Raja Bahadur Ranjit Sinha, of Nashipur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar Shah.
The Hon'ble Khan Bahadur Maulvi Delawar Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendments were lost.

SECTION 102.

The Hon'ble MR. APCAR moved that clause (b) of section 95C (now 102) be omitted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that clause (b) of section 95C (now 102) be omitted.

The Hon'ble MR. APCAR said:—"Section 95C (now 102) deals with the validation of acts and proceedings, and enacts that—

'No act done or proceeding taken under this Act shall be questioned on the ground merely of—

(b) any Commissioner having voted or taken part in any proceeding in contravention of the proviso to section 31 (now 39).'

"Now, suppose a Commissioner, although he is forbidden to speak or vote on such a subject, does actually do so; under this clause, it will not affect the validity of the proceeding. I say, have some provision which shall operate to enforce a penalty, with practical effect, on a breach of this particular law. The Commissioner will have acted in a manner forbidden by the law; then place him in exactly the same position as any person who directly by himself, or by his partner or employer, has a share in any contract or employment connected with the Corporation. Otherwise, it seems to me the proviso may become a dead letter."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"The first observation which occurs to me with reference to this matter is that the provisions of the proviso to section 31 (*now* 39) which are extremely salutary should not be frittered away in this fashion. I confess it seems to me to be absolutely meaningless to say with solemnity in one section that you shall not do this or that, and in another section to say that, if you do that in contravention of the direct provisions of the law, there shall be no penalty whatsoever. I submit that this is making the provisions of section 31 (*now* 39) absolutely nugatory, and practically inviting people to trifle with the law. Let us examine for a moment the corresponding provisions of similar Acts; and in order that I may not be charged with quoting such authorities only as are in my favour, the first authority I refer to is section 33 of the present law. I am bound to confess that in this matter the present Bill is a faithful copy of the old law. It has changed and destroyed many things, but has spared this from its ravage. But the analogy of all the other Acts will show that in this respect our Act is singular. If you will look for a moment at the Bombay Act, sections 51 and 52, you will find the provisions regarding the validity of acts and proceedings, which I need not read out at length. They correspond in substance to our section 95C (*now* 102), clause (a), but I cannot find in the Bombay Act any provision corresponding to clause (b)."

The Hon'ble Mr. BAKER said:—"The word 'disqualification' covers it. That appears in the Bombay Act."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA continued:—"The interpretation which the Hon'ble Member seeks to force upon the Bombay Act is absolutely inadmissible, as will be manifest if you read all the provisions together. Then let us look to the English Act from which all these provisions have been only too faithfully reproduced (45 & 46 Vict. Chapter 50, section 22). First of all section 12 specifies the disqualifications for being a councillor. Then section 22, sub-section (3), provides that a councillor shall not vote or take part in the discussion of any matter in which he has a pecuniary interest; this is followed by sub-section (4), which lays down that no proceeding of the Council shall be questioned on account of any vacancy in their body. But let us not forget that it stops with the word 'vacancy,' and does not go on to add that the proceedings will be valid even if there be an infraction of the provisions of the preceding clause. I venture to affirm, therefore, that both reason and precedent are against the course we are asked to adopt."

The Hon'ble Mr. BAKER said:—"The Hon'ble Member has omitted to refer to section 42 of the English Municipal Corporations Act. It is as follows:

'42. (1) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.

'(2) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

'(3) A Burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.'"

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"That only refers to the validity of election, and has not the remotest bearing upon the question now at issue."

The Hon'ble Mr. BAKER said:—"The word 'councillor' includes every member of an English Corporation. It includes the mayor, the aldermen and the councillors. The section, as it stands in the Bill, is the law in Calcutta now, and I understand it is also the law in the Punjab. I was also under the impression that it was the law in Bombay, but the Hon'ble Member may be right in his interpretation of the Bombay Act."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"I think it is not the law in the Punjab."

The Hon'ble MR. BAKER said:—"I understand so. But, quite apart from that, there is no ground for making the change. I may point out how exceedingly inconvenient it would be to introduce this disqualification. Supposing at a meeting at which some contract was sanctioned some Commissioner had taken part who had no right to take part. Suppose that works were sanctioned and taken up by the contractors and partly done, and then some months afterwards suppose somebody discovered that this gentleman was disqualified to the extent mentioned in this clause (b). Would that be a justification for invalidating or calling in question the proceedings of the meeting? It would be impossible. It might run the Corporation in for I do not know how much in the matter of damages."

The Hon'ble MR. APCAR, in reply, said:—"Sir, the same effect would be consequent upon any one taking part in the proceedings who comes under sub-section (1) of section 31 (now 39), if by some oversight or other a Commissioner were to take part in these discussions or vote with regard to contracts where he has no right to do so. With regard to what my hon'ble friend has said about the inconvenience which would result, I do not think that that is a sufficient reason for allowing this particular clause to remain. It may be that the interested Commissioner has himself given practically the casting vote which decided the matter. It may lead to applications in the Courts by those who are affected by such a vote, on the part of any one being dismissed from employment, or in some question of that kind; and it would lead to the Corporation being bound by a decision once arrived at without having the power of revising what has been done."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"With regard to the law in the Punjab I find there is nothing in the Punjab Act similar to this."

The Hon'ble MR. BAKER said:—"Then I withdraw that statement."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA continued:—"With regard to section 42 of the English Act, I repeat that it has nothing to do with this matter. That applies only to the case of persons disqualified from holding an office. If the terms of section 12 and section 42 are compared, it is quite clear that they are to be taken together. I do not see that there is any protection when a member of the council votes in contravention of the clear provisions of section 22, sub-section (3).

The motions were then put and lost.

SECTION 112.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the word "Chairman" be inserted after the words "by the" in line 1 of clause (a) of section 104 (now 112).

He said:—"This is a very small matter, Sir. It refers to the signing of cheques for payment. The Bombay Act (section 113) requires that these cheques should be signed by the Chairman. Our present law is different. Cheques are signed by the Vice-Chairman and the Secretary. I think, in a matter like this, the responsibility being a financial responsibility, the Chairman ought to be associated with the other signatories. I have no very strong feeling about the matter, but I think, this being a financial question, it would be an additional safeguard if the Chairman's signature were associated with the signatures of the Vice-Chairman and the Secretary."

The Hon'ble MR. BAKER said:—"I cannot think the Hon'ble Member is serious in asking that the Chairman should sign all cheques in addition to the Vice-Chairman and the Secretary. There is no precedent for such a thing; it is not the law now, nor is it necessary. In Bombay it is not the case. There the cheques are signed by the Municipal Commissioner, as there is no Vice-Chairman; but there are not three signatures to each cheque."

The motion was put and lost.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that for the words "by a member of the General Committee" in lines 5 and 6 of clause (b) of section 104 (*now* 112), the following be substituted:—

"by some other person appointed in that behalf by the Chairman with the consent of the General Committee."

He said:—"This is a recommendation of the Corporation. They say there will be considerable difficulty in getting a member of the General Committee to do this work. I think my hon'ble friend must agree that it will lead to great inconvenience in practice."

The Hon'ble MR. BAKER said:—"This is a small matter, and I accept it. I would point out that it is only in the event of the illness or absence of the Vice-Chairman and the Secretary that a member of the General Committee would have to sign."

The motion was put and agreed to.

SECTION 113.

The Hon'ble BABU SURENDRANATH BANERJEE moved that section 105 (*now* 113) be omitted.

He said:—"Section 105 (*now* 113) refers to the opening of an account outside the limits of Calcutta. Well, Sir, we have not got such an account now, and have never felt the inconvenience of not having such a section. They have it in Bombay, but that is no reason why we should have it here. The Corporation has now been in existence since 1863, and we have never had an account with any Bank outside the limits of Calcutta, and we do not need one now. I do not see why we should have a section like this which might offer a temptation to somebody to try to open such an account."

The Hon'ble MR. BAKER said:—"I think it is better, Sir, that the Corporation should have this power, and I may mention that the Port Commissioners here have a similar power. Among other accounts, they have an account in England. They use that account to draw upon for payment of stores and other articles which have to be imported for their works from England. I do not know that it is likely to be equally necessary in the case of the Corporation. The Corporation do not use the same amount of stores and machinery and articles of that kind as the Port Trust, but they do use a good deal of machinery and other imported articles, such as pipes, &c., for their waterworks and drainage works, and it is perfectly possible that they might find it useful to have an account in England."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"If ever there was an occasion for opening an account in London it is now, when the Corporation has embarked upon some of the largest contracts they have ever entered into. They have not yet felt the need for such an account, and are not likely to feel it in the future. I do not know that the matter is one of importance or that I should press it if my hon'ble friend has a strong opinion in regard to it."

The Hon'ble MR. BAKER said:—"I have no strong opinion, but I think it is a useful power to have."

The motion was then put and lost.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 105 (*now* 113), line 3, the words "and subject to the control of the Corporation" be inserted after "General Committee."

He said:—"The statutory provision contained in section 103 (*now* 111) is that the Corporation should have an account only with the Bank of Bengal. If any other account is to be opened with any other Bank outside Calcutta,

I think the Corporation should also have a voice in the matter. All that I propose is that the Corporation should have a general power of control in a matter like this which is to open an account with a separate Bank outside Calcutta."

The Hon'ble MR. BAKER said:—"This is a matter of very small importance, Sir. I do not wish to oppose it, and, if this amendment had been moved by one of the Hon'ble Members connected with the Corporation, I should have been ready to accept it." But I am not sure if the Hon'ble Babu Jatra Mohan Sen really understands the matter. If the Hon'ble Members who represent the Corporation support it, I am not prepared to object. But I would add, with regard to the abstract question of opening an account, that the power would be left in the hands of a Board of Directors of a Limited Liability Company. It would not be given over to the shareholders. Therefore, I think the matter should be left to the General Committee; but, if the Hon'ble Members who represent the Corporation support the matter, I am not prepared to oppose."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am certainly in favour of the amendment. I think it is as well that a matter of this sort should be under the control of the Corporation."

The motion being put, the Council divided as follows:—

Ayes 10.

The Hon'ble Mr. Handley.
The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath S.n.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hosain Ahmed.
The Hon'ble the President.

Noes 9.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Dr. Asutosh Mukhopadhyaya.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was carried.

SECTION 114.

The several motions for the omission of section 93 (*now 100*) having been lost on a previous occasion, the Hon'ble BABU JATRA MOHAN SEN, by leave of the Council, withdrew the motion standing in his name, that clause (b) of section 106 (*now 114*) be omitted.

SECTION 116.

The Hon'ble MR. BAKER moved that in section 108 (*now 116*) the words "sanctioned by a municipal authority" be substituted for the words "sanctioned by the General Committee."

He said:—"This was a clerical error in the Bill. The section as it stands would require the Vice-Chairman or whoever signs cheques to satisfy himself that the cheque is drawn for a purpose, or for a work specifically sanctioned by the General Committee. But the General Committee is not the only municipal authority which has the power to sanction works. The Chairman has power to sanction small works, and the Corporation has to sanction large ones. Therefore, it is necessary to make the wording more general."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I beg to support the amendment."

The motion was put and agreed.

SECTION 119.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for the words "General Committee" in lines 3 and 4 of sub-section (3) of section 112 (*now* 119), the word "Corporation" be substituted.

He said:—"It is a mere matter of deposit of investments, and the Corporation fixes the Banks. Therefore, it seems to me that in this case the Corporation also should fix the deposits. Section 112 (*now* 119) is as follows:—

'112. (1) Surplus moneys at the credit of any of the Municipal Funds which cannot immediately or at an early date be applied to the purposes of this Act, or of any loan raised under this or any former Act, may from time to time be deposited at interest in the Bank of Bengal, or invested in any of the securities or debentures mentioned in section 130 (*now* 135), sub-section (1).

'(2) All such surplus moneys which it is necessary to keep readily available for application to the said purposes, and all such surplus moneys which cannot, in the opinion of the Chairman, concurred in by the General Committee, be favourably deposited or invested as aforesaid, may be deposited at interest at any bank or banks in Calcutta which the General Committee may, subject to the control of the Corporation, from time to time select for the purpose.

'(3) All such deposits and investments shall be made by the Chairman on behalf of the Corporation, with the sanction of the General Committee; and, with the like sanction, the Chairman may at any time withdraw any deposit so made, or dispose of any securities, and re-deposit or re-invest the money so withdrawn, or the proceeds of the disposal of such securities; but no order for making any deposit, investment, withdrawal or disposal under this section shall have any validity unless the same be in writing, signed by the Chairman and the Secretary.

'(4) The loss, if any, arising from any such deposit or investment shall be debited to the Municipal Funds.'

"The banks are selected subject to the approval of the Corporation. Therefore, I say that all deposits and investments shall be made by the Chairman on behalf of the Corporation and with the sanction of the Corporation instead of the sanction of the General Committee."

The Hon'ble MR. BAKER said:—"I think there is some misapprehension. The manner in which investments are to be made of surplus funds and the precise securities in which money may be invested are laid down in the Bill itself, in section 130 (*now* 135). That is absolutely fixed, and no one has any discretion. If any money is not to be deposited in the Bank of Bengal, it is for the Corporation to select the Banks in which the deposit may be made. All that remains is the mechanical routine work of making the deposit or investment. There is nothing further to be done. That is work which would be quite impossible for a large deliberative body to carry out. It really ought to be done by the Chairman, and the work in fact will be done by the Chairman; but, as it involves a certain amount of discretion, he is to require the sanction of the General Committee. It is quite unnecessary and superfluous to require the sanction of the Corporation in addition."

The Hon'ble BABU SURENDRANATH BANERJEE, then, by leave of the Council, withdrew the amendment.

SECTION 114.

The Hon'ble BABU SURENDRANATH BANERJEE moved that clause (c) of section 114 (*now* 121) be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that, if the last motion be lost, for the words "two lakhs" in clause (c) of section 114 (*now* 121), the words "one lakh" should be substituted.

He said:—"This is a matter of considerable importance, and I think the two amendments may be taken together. Clause (c) of section 114 (*now* 121) provides that the General Committee shall allow—

'(c) for each balance at the end of the said year of not less than two lakhs of rupees.'

"Under the existing law no statutory obligation is imposed upon the Corporation to provide a fixed sum as an annual cash balance. The Corporation is at liberty to provide for any cash balance it may think fit, and I think it will be admitted by those best acquainted with the working of the Corporation that the Corporation has always made ample provision in this respect. No difficulty has ever arisen within my knowledge owing to absence of a provision such as is now proposed. Now, Sir, you take away the discretion from the Corporation and you say that the Corporation must at least provide a cash balance of two lakhs of rupees. Sir, I desire to point out in the first instance that in the original Bill, instead of a cash balance of two lakhs, we had a cash balance of one lakh of rupees; and then it seems that my hon'ble friend, the Member in charge of the Bill, after some conference with the Municipal Executive, came to the conclusion that instead of one lakh of rupees the cash balance ought to be two lakhs. Sir, I desire that in a matter of this kind the Corporation should be left absolutely free. The Corporation has not abused its discretion in this respect in the past, and it may be trusted not to abuse it in the future. Nay more, there is positive risk in a hard-and-fast rule on the subject; and, Sir, I desire to refer to the circumstances of the Government over which you preside. Under the orders of the Secretary of State the Bengal Government is obliged to have a cash balance of 20 lakhs of rupees. It is not a statutory obligation, and I think it is fortunate that it is not, because one year—and I think the fact will be in the recollection of most Members—our cash balance dwindled down to the sum of five lakhs of rupees. I should like to know what the position of Government would have been if there was a statutory obligation making it a duty by law that the cash balance should be fixed at the minimum sum of 20 lakhs of rupees. I think Government would have been placed in a position of considerable difficulty. You will place the Corporation in a position of considerable difficulty by laying down a hard-and-fast rule of this kind. Such a rule has not been found necessary; the financial work of the Corporation has gone on satisfactorily enough without it; and, that being so, it seems to me that it would be desirable to leave to the Corporation the discretion which it at present enjoys. Why should we lay down a rule to the effect that the cash balance must not be less than two lakhs of rupees? The Corporation may be trusted to leave a cash balance which would be amply sufficient for all purposes. That is the experience of the past, and the experience of the past ought to guide us in the future. There may be occasions—we cannot absolutely anticipate the future—when it might be difficult to have a cash balance of two lakhs; but if you have a hard-and-fast rule you will place the Corporation in a position of serious difficulty, perhaps at a time when its finances are not in a satisfactory condition."

The Hon'ble Mr. BAKER said:—"This is a practical question. I admit that in the present Act there is no provision for any fixed closing balance. In Bombay, however, there is such a provision. In Bombay the Corporation is required to provide a closing balance of one lakh of rupees. Is it not inconsistent with sound finance that the Corporation should be at liberty to frame its budget in such a way that it should not have a suitable working balance? The Hon'ble Babu Surendranath Banerjee has told us that the Local Government is required under the orders of the Government of India to have a closing balance of 20 lakhs. That is so, and we always endeavour to work up to it. But how could there possibly be any statutory obligation on the Local Government? The thing is inconceivable. But here, in settling the constitution of the new Municipality, we are laying down rules for its guidance in all respects, including the provision of funds and its financial arrangements; and it seems an essential part and a most important part of those financial arrangements that we should prescribe some closing balance to which they should be required to work up. The Hon'ble Member has said that the Corporation has not abused its discretion in the past. That is so. I freely admit that; but I am informed that they have not always provided for a genuine working balance. I am informed that, although they have frequently shown an apparently larger balance than we now propose, that was only done by transferring a part of their capital account to the revenue account. That is what I understand is the case. I speak subject

to correction; but I am informed that it is so. If that is the case, if it has often been the case, it is distinctly indicative of unsound finance, and, therefore, it is all the more incumbent upon us to make suitable provision for a real closing balance in this legislation.

"Tuen, Sir, with regard to the amount which should be fixed. The Hon'ble Member has rightly told us that in the original Bill it was proposed to take one lakh as the closing balance. But the Vice-Chairman, who is generally speaking in charge of the municipal accounts, represented to us that a balance of one lakh was not sufficient; for this reason: that the monthly amount which has to be disbursed on account of salaries and small contingent charges comes to very nearly one lakh of rupees. At the beginning of every month, within the first two or three days, a sum of very nearly one lakh has to be paid out on that account. Now, the result in the first week of April is this: that the balance on the 1st April is one lakh; by the 7th April almost the whole month of March; and, if there are any bills on account of works coming in about that time, the account of the Corporation has to be overdrawn. Therefore, in the Vice-Chairman's opinion, a balance of two lakhs was essential. I am bound to say that it seemed to me the Vice-Chairman was right, and that was the view which commended itself to the Select Committee. It seems perfectly reasonable that we should provide a closing balance of a substantial amount, and not a purely nominal amount which is liable to be swept away in the ordinary course of current expenditure within the first week of the opening month of the year."

The Hon'ble Mr. OLDHAM said:—"I have only to add in corroboration of what the Hon'ble Mr. Baker has said that this is a point on which the greatest stress is laid by our trusted Vice-Chairman of the Corporation, Babu Nilambar Mookerjee; and though I know my friend the Hon'ble Babu Surendranath Banerjee can reply to that, as he replied when the name of Mr. Bright was brought in, I would remind him that this matter was discussed by practical men, and no one has such practical connection with this matter as our respected Vice-Chairman, Babu Nilambar Mookerjee."

The Hon'ble Mr. APCAR:—"I desire to support what the Hon'ble Member in charge of the Bill has said. I think there is a great deal of substance in what he said, and I am in favour of the inclusion of this clause."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I am not prepared to give up my opinion. I entirely endorse the remarks which have fallen from the Hon'ble Mr. Oldham in regard to the Vice-Chairman. He fully deserves the encomium which has been bestowed upon him."

"The Hon'ble Member in charge of the Bill has said that it is inconsistent with sound finance that there should not be a closing balance of one or two lakhs of rupees. I do not know what is good and what is bad finance, but I conceive that to be good finance in which the assets greatly preponderate over the liabilities; and I think that has been the financial condition of the Corporation all along. The Corporation has paid its way; it has had its cash balance, and it has a large credit, though I am sorry to say that that credit is now somewhat on the wane. Notwithstanding the absence of a provision like this to which the Hon'ble Member in charge of the Bill attaches such great importance, our financial position has been exceedingly sound, when judged not by reference to abstract theories, but to actual facts."

The Hon'ble Mr. BAKER said:—"Is it not the fact that the nominal cash balance has been steadily dwindling for years?"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I cannot say that it has been dwindling. Sometimes our cash balance was satisfactory, and sometimes not; but I do not think there has been a steady downward movement. After the plague it was bad, I admit, but I suppose the finances of everybody, not excepting that of the Government of Bengal, have been bad after the plague. Therefore, that was a general condition to which the Corporation had to submit along with with other institutions of higher status and position."

"Then, with regard to another remark which the Hon'ble Member in charge of the Bill made, namely, that it is inconceivable that the Government of Bengal can have a statutory obligation imposed on them. Supposing there was an Act of Parliament? I presume an Act of Parliament would make it obligatory even on the Government of Bengal to provide for a cash balance of 20 lakhs, and that would be a statutory obligation. But, Sir, that is neither here nor there. I am sorry to find that all my friends, even the member for the Corporation, is opposed to this amendment; but still I am not prepared to give it up. I have had an opportunity of talking this matter over with friends, whose opinions are entitled to the highest respect as experienced members of the Corporation, and they are distinctly of opinion—and I echo their opinion in their matter, which is in entire accord with my own—that in this matter the Corporation should be permitted a free hand."

The motions were then severally put and lost.

SECTION 125.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 118 (*now* 125), line 5, the words "and re-submission within a specified time" be inserted after "further consideration."

He said:—"Section 118 (*now* 125) provides that—

"Subject to the provisions or sub-section (1) of section 117 (*now* 124), and to the other requirements of this Act, the Corporation may refer the Budget Estimate back to the General Committee for further consideration, or may adopt the Budget Estimate or any revised Budget Estimate submitted to them, either as it stands, or subject to such alteration as they may deem expedient:"

and clause (b) provides that—

"if by the twenty third day of March the Corporation have not adopted any Budget Estimate, the Budget Estimate prepared by, or the last revised Budget Estimate submitted by, the General Committee shall, subject to any alterations that may be agreed upon by the Corporation and the General Committee, be deemed to be the Budget Estimate finally adopted, and the municipal rates and taxes shall be levied at the rates provided for therein."

"Now, Sir, the provision is made that, if the Corporation do not decide one way or the other as to the adoption of the Budget Estimate on the 23rd day of March, the Budget Estimate submitted by the General Committee shall be taken as adopted. Now, provision has been made for submission of the Budget Estimate to the General Committee for re-consideration. The General Committee ought to re-submit it within some time to be specified within the 27th of March for the consideration of the General Committee of those revised estimates. Unless a time is limited, and if the General Committee fail to submit the revised estimate as asked for by the Corporation, the Corporation would be thoroughly helpless, and the Budget Estimate, as submitted originally, will have to be taken as the one adopted. Therefore, when it is provided that the Budget Estimate may be referred back to the General Committee, that Budget Estimate after revision ought to be submitted to the Corporation within a time to enable them to adopt it or to modify it, and that is the reason why I have suggested that a certain time should be fixed within which to re-submit the report."

The Hon'ble MR. BAKER said:—"I accept this amendment."

The motion was put and agreed to.

The Hon'ble BABU JATRA MOHAN SEN also moved that in section 118 (*now* 125), clause (b), line 1, the words "twenty-ninth" be substituted for "twenty-third:"

He said:—"I may as well take this amendment along with my amendments 91* and 93† which point to the same object."

* That at the end of section 122 (*now* 127), sub-section (2), the words "or adopt both of these methods" be added.

† That in section 124A (*now* 130), line 2, the words "twenty-eighth" be substituted for "twenty-second."

The Hon'ble Mr. BAKER said:—"Amendment No. 91 relates to an entirely different matter. Amendment No. 93 is also quite different."

The Hon'ble BABU JATRA MOHAN Sen said:—"The first meeting of the Corporation to consider the Budget Estimate is provided for by section 116 (*now* 123), and section 115 (*now* 122) provides that the Chairman shall, not later than the 1st March, forward a copy to each Commissioner, and the earliest meeting that can be held is the 7th March of every year. Provision is made to refer it back to the General Committee. The time allowed is from the 7th March, and that is the earliest opportunity on which the Corporation can come to a decision as to whether the Budget Estimate should be referred back to the General Committee. The General Committee will have to consider the Budget Estimate after it is sent back to them, and some time must elapse before they meet, and then the revised estimate will have to be circulated, and the time allowed is only between the 7th March to the 22nd March. It is only two weeks. It is a very short interval, and I only ask that the time be enlarged by one week more, that is, the 28th March. The object of the amendment is to give only another week to consider the whole matter. The Budget Estimate is a very important matter, and therefore it is desirable that the Corporation should be allowed to consider this matter at least for a period of three weeks, from the 7th to the 28th March. I think it is only reasonable that it should be so. The financial year closes at the end of March, and we take this matter up on the 28th March. It is very reasonable that three weeks should be given to the Corporation to fully consider the matter."

The Hon'ble Mr. APCAR said:—"If the Hon'ble Member in charge of the Bill will allow me to speak first, I would submit a suggestion for him to consider. I think that, if the matter is to be resubmitted to the General Committee, there ought to be an opportunity given to the Corporation by the General Committee, for the Corporation to express their views about it. Whatever period it may be thought advisable to give for a final decision in the matter, I think a proviso somewhat to the effect that the General Committee do re-submit not later than seven days before the 16th March would be advisable."

The Hon'ble Mr. BAKER said:—"That has already been carried on the motion of the Hon'ble Babu Jatra Mohan Sen which I accepted just now. The Corporation would fix the time with reference to the nature of the work to be done."

The Hon'ble Mr. BAKER continued:—"I cannot accept this amendment. In the first place, the date, the 23rd of March, is really fixed by section 117 (*now* 124), which provides that—

'The Corporation shall, on or before the twenty-second day of March, after considering the General Committee's proposals in this behalf, determine, subject to the limitations and conditions prescribed in Part VI, the rates at which municipal rates and other taxes shall be levied in the next ensuing financial year.'

"Section 118 (*now* 125) merely lays down what the consequences are if the Corporation fail to settle the budget by that date. I would remind the Council that in the original Bill all these dates in connection with the Budget were entirely different from what they are now. They were put much earlier in the year—nearly three months earlier. This was strongly objected to by the Corporation, it was strongly objected to by the Hon'ble Members who represented the Corporation on the Select Committee, and I may say I also took serious exception to them. We went into these dates with very considerable care, and we re-arranged the whole scheme of them, and the dates that are now in the Bill represent the conclusion at which we unanimously arrived. I think the Hon'ble Babu Surendranath Banerjee will bear me out. I think we ought not to change these dates without very strong reasons, and it would be very inconvenient to change them at the last moment. Moreover, there is a practical difficulty in accepting the amendment, and that is that the Easter holidays fall just about the end of March. It might happen that the period from the 29th March to the 3rd or 4th April was all close holidays, and the result of that would be that no Budget at all could have been settled until three and four days after

the year had begun. I think it would be unsafe to take any date later than the 23rd March in this connection."

The Hon'ble BABU SURENDRANATH BANERJEE said :—" I am in sympathy with the proposal of the Hon'ble Babu Jatra Mohan Sen, but I cannot overlook the practical difficulties in the way. There is one practical difficulty to which I desire to call special attention, and that is this: suppose the meeting of the Corporation is held on the 28th or 29th March, and the rates are altered. The bills would have to be issued on the 1st April. I do not think there would be sufficient time between the 29th March and the 1st April to permit of the issue of the bills on the 1st April. That is a serious difficulty, and it may interfere with the collections. This is a point which has been overlooked. The Hon'ble Mr. Baker was quite right when he said that these dates were suggested by the Corporation after most careful consideration in consultation with heads of departments, and I hope that they may be permitted to remain."

The Hon'ble BABU JATRA MOHAN SEN said :—" I am a stranger to Calcutta and not acquainted with the internal affairs of the Corporation. After hearing what has fallen from the Hon'ble Member in charge of the Bill and the Hon'ble Babu Surendranath Banerjee, I am prepared to withdraw this motion."

The Hon'ble BABU SURENDRANATH BANERJEE said :—" The Corporation ought at least to have a week's time from the time the Budget is laid before them by the General Committee, that is to say, the 16th March ought to be the latest date, I think, when the Budget should be laid before the Corporation by the General Committee after re-consideration."

The Hon'ble MR. BAKER said :—" I am disposed to agree to that, but it seems to me that the motion of the Hon'ble Babu Jatra Mohan Sen, which has been accepted,* will enable the Corporation to secure that. That was what I intended to say to Mr. Apcar. The Corporation, when they return the Budget to the General Committee, are empowered, under the Hon'ble Babu Jatra Mohan Sen's amendment, to fix a specified time within which the Budget is to be resubmitted to them. They can fix the time for themselves."

The Hon'ble MR. APCAR said :—" I would ask that the date be fixed. I do not wish to disturb the dates as they have been fixed in the Bill. All that I seek is that there should be a statutory period within which these matters be resubmitted to the Corporation, say within a specified time not later than the 16th March, and, if that is accepted, I think it would be an advantage."

The Hon'ble MR. BAKER said :—" How is it possible to do so? Suppose the Corporation only came to a conclusion themselves on the 16th March."

The Hon'ble MR. BOLTON said :—" There may be more than one meeting of the General Committee, and the Corporation might send back the Budget Estimate for further information from the General Committee. The provision which will be made in accordance with Hon'ble Babu Jatra Mohan Sen's amendment will fully meet the case. The Corporation can fix any date suitable for the final consideration of the estimate."

The Hon'ble MR. BAKER said :—" Surely it is better to leave it elastic. The Corporation can fix any date they like."

The Hon'ble THE PRESIDENT said :—" I have no objection to the Hon'ble Mr. Apcar's framing a motion if he so wishes."

The Hon'ble MR. APCAR said :—" I should like to place it on record that I do—'not later than the 16th March.' It should be provided that the General Committee do re-submit the estimates 'not later than the 16th March'."

The Hon'ble THE PRESIDENT said:—"Suppose the Corporation had its meeting on the 16th March?"

The Hon'ble MR. APCAR said:—"Then, Sir, they would not have an opportunity of reconsidering the question. But I wish to secure a consideration before that day."

The Hon'ble THE PRESIDENT said:—"Under the section as it now stands, suppose the Corporation had its meeting on the 16th March? I should like to know whether, after hearing the explanations offered, the Hon'ble Member wishes to frame a regular motion to put before the Council."

The Hon'ble MR. APCAR said:—"I should say that if there was this law I think the estimate would be submitted before the 16th March."

The Hon'ble THE PRESIDENT said:—"The law says that it should be submitted not later than the 7th day of March."

The Hon'ble MR. BAKER said:—"The words, 'specified time' mean a time to be specified by an order of the Corporation. That is exactly the wording of the motion."

The Hon'ble THE PRESIDENT said:—"The section as it will now read will be:—'The Corporation may refer the Budget Estimate back to the General Committee for further consideration and resubmission within a specified time.'"

The Hon'ble MR. APCAR said:—"After this discussion I will not trouble the Council with a further amendment."

The motion was then, by leave of the Council, withdrawn.

SECTION 127.

The Hon'ble BABU JATRA MOHAN SEN moved that at the end of section 122 (*now* 127), sub-section (2), the words "or adopt both of those methods" be added.

He said:—"I think it is reasonable that power should be given to adopt either one or other or *both* the methods referred to in this section. I do not think it requires any argument to support this."

The Hon'ble MR. BAKER said:—"I accept this amendment."

The motion was put and agreed to.

SECTION 129.

The Hon'ble MR. BAKER moved that the following words be added at the end of section 124 (*now* 129), namely:—

"or to pay off any debt due to the Government."

He said:—"Under section 406 of the present Act the Corporation have power to convert their loans, that is to say, they have power to borrow money for the purpose of paying off any existing loan. The circumstances under which that is done are usually when there has been a fall in the current rate of interest, and they have power to borrow money at the lower rate of interest then current in order to discharge a former loan on which a higher rate of interest was payable. The same provision is included in section 124 (*now* 129) of the Bill, but I have noticed that neither under the Act nor under the Bill is there any corresponding power given to borrow money to pay off a loan due to Government. The power under the Act and under the Bill is confined to borrowing money for the purpose of paying off debenture loans raised in the open market, and there is no such power in the case of loans which have been taken from Government. It seems to me, Sir, that it might be advantageous to the Corporation to have the same power in respect of their loans due to Government."

There is only one such loan at present, a comparatively small one, in which the outstanding balance is 36 lakhs of rupees, but we cannot tell what loans there may be in the future; and it is possible that it might pay the Corporation to borrow money in the open market and pay off a Government loan. The history of the recent loans does not look as if it would be so, but, at all events, it is conceivable that it might be to the advantage of the Corporation to take that course. Therefore, I purpose to give the Corporation similar power in respect of Government loans to that which they have in respect of debenture loans."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have not the smallest objection to this amendment, which would enable the Corporation to pay off any loan due to Government. The marginal note, however, to the section will have to be altered."

The motion was put and agreed to.

SECTION 130.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 124A (now 130), line 2, the words "twenty-eighth" be substituted for "twenty-second."

He said:—"I do not think the same objection will be raised by the Hon'ble Babu Surendranath Banerjee to this amendment as to the difficulty of issuing bills with regard to assessments if there is any alteration made; but I think the Corporation ought to have an extended time to consider the reports of the General Committee with regard to the raising of loans. They would be busy no doubt with the Budget Estimate, revising assessments or making any other alteration that may be necessary which may interfere with the internal management of the Corporation; but still I think a larger period ought to be given to them to consider as to how and in what manner loans should be raised. I think an extension of a week's time is only reasonable."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"As my friend the Hon'ble Babu Jatra Mohan Sen has referred to me and to my personal opinion about this amendment, I can only say that, if he had been acquainted with the practical working of the Corporation, I do not think he would have brought forward this amendment. The fixing of the rates is to take place on the 27th March, and the fixing of the rates and the determination of the loans take place at one and the same time. They form part and parcel of the same Budget statement. The two Budgets are considered together, and they are bound to be considered together, because the loans determine the rates; that is to say, if you provide for loans, you must provide for interest and sinking fund. You cannot therefore consider the rates irrespective of the loans. It seems to me to be an almost absurd proposal—but that is perhaps too strong an expression to use—to ask the Corporation to fix the loans after it has fixed the rates. The rates will have to be determined with reference to the loans. I think after this explanation the Hon'ble Member will perhaps withdraw his motion."

The Hon'ble MR. BAKER said:—"The Hon'ble Babu Surendranath Banerjee has exactly anticipated what I was going to say. The loan budget and the revenue budget must be taken together."

The Hon'ble BABU JATRA MOHAN SEN said:—"After these explanations I will not press the amendment."

The motion was then, by leave of the council, withdrawn.

SECTION 138.

The Hon'ble MR. BAKER moved that in sub-section (3) of section 133 (now 138), the words "The stock to be so paid off shall be purchased in the open market and" be omitted, and that the words "and the stock to be paid off shall be purchased in the open market" be inserted after the word "prescribed."

He said:—"The object of this amendment is to correct a clerical error in the Bill. Under section 411 of the present Act the Corporation have power to consolidate their loans. It was intended to reproduce this section without change in the Bill, but the opportunity was taken, I understand, to slightly improve the wording of it, with the result that these two lines at the top of clause (3) were inserted in the wrong place, and they make nonsense of the section. The section as it stands is absolutely meaningless. As it now runs it is as follows:—

'(3) The stock to be so paid off shall be purchased in the open market, and the Corporation shall repay such loan by annual payments at a rate of not less than one-sixtieth of the unpaid balance in each year, instead of making payments into a Sinking Fund as hereinbefore prescribed; and such payments shall be made in priority to all other payments (other than payments prescribed by section 127 (now 133), sub-section (2), and section 133A) (now 140) due from the Corporation:'

"There is no reference anywhere to the stock to be paid off. The section as amended will read:—

'The Corporation shall repay such loan by annual payments at a rate of not less than one-sixtieth of the unpaid balance in each year, instead of making payments into a Sinking Fund as hereinbefore prescribed, and the stock to be paid off shall be purchased in the open market; and such payments shall be made in priority to all other payments (other than payments prescribed by section 127 (now 133), sub-section (2), and section 133A) (now 140) due from the Corporation:'

"That makes sense, but as the section stands it is nonsense."

The motion was put and agreed to.

NEW SECTION.

The Hon'ble MR. BAKER moved that the following section be inserted after section 133, namely:—

"133AA (now 133). The time for the repayment of any money borrowed under section 124 (now 129) or section 133 (now 138) for the purpose of discharging any previous loan shall not, except with the express sanction of the Government of India, extend beyond the unexpired portion of the period for which such previous loan was sanctioned.

He said:—"I may explain that this section has been introduced under the directions of the Government of India. They consider that, when any new loan is raised for the purpose of paying off any existing loan, the currency of the new loan must not extend beyond the currency of the original loan. There is a similar provision in the Bombay Act, and the Government of India have stated that they consider it necessary to have similar provision here. There is just one loophole allowed, which is, the words, 'except with the express sanction of the Government of India.' They give us that amount of loophole for extending the currency of the loans beyond the original period, but without their sanction they refuse to allow it to be done."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Have you consulted the Municipal Executive about this matter?"

The Hon'ble MR. BAKER said:—"Not about this. But I may mention that we made two representations to the Government of India, and their orders are positive."

The Hon'ble MR. APCAR said:—"I do not see any harm in this amendment."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I should feel greater confidence in a thing of this kind if it had the support of the Municipal Executive, because they understand these things much better than those who are not connected with the actual administration of municipal affairs. It would have been an advantage—apart from the mandate of the Government of India—if we had an opportunity of ascertaining what the Chairman and Vice-Chairman thought about it."

The Hon'ble Mr. BAKER said:—"We only received these instructions two or three days before the discussions began, so there really has been no time. As a matter of fact, we have made an unofficial reference to the Corporation. I have informed the Chairman and talked the matter over with him. I do not profess to be personally in favour of this section."

The Hon'ble THE PRESIDENT said:—"We will allow this motion to be postponed till to-morrow."

The further consideration of the amendment was then postponed to the next meeting of the Council.

SECTION 141.

The Hon'ble BABU JATRA MOHAN SEN moved that section 133B (*now* 141) be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for section 133B (*now* 141) the following sections be substituted:—

"133B. (1) If any money borrowed by the Corporation from the Government, whether before or after the commencement of this Act, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may direct any Government officer, not being a municipal authority or officer, to detain, to the extent of any payments then in arrear, any moneys due, or that may become due, to the Corporation, which he may then or thereafter have in his custody or control.

(2) Such officer shall detain the moneys which he is so directed to detain, and pay the same, as they become due to the Corporation, to the officer for the time being appointed to receive Government dues, or into the Bank of Bengal.

"133C. (1) If the amount in arrear cannot be recovered in the manner provided in section 133B, the Local Government may attach the Municipal Funds, or any tax leviable by the Corporation.

(2) After such attachment, no person, except an officer appointed by the Local Government in this behalf, shall in any way deal with the attached Funds or tax; but such officer may do all acts in respect thereof which the Corporation or any municipal authority might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the amount in arrear and of all expenses involved by the attachment and subsequent proceedings.

(3) Provided that no such attachment shall defeat or prejudice any debt for which the Funds or tax attached was previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the Funds or tax attached before any part of the proceeds is applied to the satisfaction of the debt due to the Government."

The Hon'ble BABU JATRA MOHAN SEN said:—"My proposal is to omit section 133B (*now* 141) altogether. That section provides:—

'If any money borrowed by the Corporation from the Government, whether before or after the commencement of this Act, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the Municipal Funds or any of them.'

"My suggestion is that the control sections give ample power to the Local Government to interfere in all matters of this kind. This section, I should think, is redundant and unnecessary. If you refer to section 26 (*now* 18), it would appear that it makes provision as to how this knowledge is to be gathered by Government. In the face of this enactment I submit that this section is unnecessary."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"May I be permitted to make a few observations upon the motion of my hon'ble friend Babu Jatra Mohan Sen? I entirely accept the view which he has put forward that this section is absolutely unnecessary, and I venture to submit that the framers of the Bill were also of opinion that it was unnecessary because you do not find it in the original Bill. The original Bill contained more than 600 sections. It traversed every conceivable and inconceivable ground within the domain of municipal administration, and yet this section found no place in it. Therefore, I am right in holding that the framers of the original Bill did not think that a section of this kind was necessary. And, Sir, in

regard to the section, I beg to point out that for the first time it was laid before the Select Committee in February, 1899. I have in my possession the paper that was circulated to the Select Committee and, therefore, I am able to give the date. Therefore, Sir, we are in this position that we are about to legislate upon a matter of this magnitude and importance, without the guidance of those public bodies whose opinions have been invited about the various provisions of the Bill. The Chamber of Commerce has not a word to say about this particular section. The Trades Association has not been consulted. The opinion of the Corporation has not been invited. Therefore, it is our duty to proceed with the utmost care and circumspection in this matter. I maintain that the section is unnecessary. It does not exist in the present law; it is not to be found in the law of 1876; it is not to be found in the law of 1863. Ever since we have had a Municipality in Calcutta, a provision like this has not been found necessary to safeguard the interests of the Government, and the Government has always freely lent money to the Corporation. Where then is the necessity for this section, especially when under the new law we are to have a Corporation which is practically to be controlled by officials? The only occasion when a default was made by the Corporation in respect of the payment of interest upon a loan due to Government occurred about a year ago owing to some bungling in the office. The matter is now being enquired into by the Corporation. The interest due upon a loan to Government was not paid, and in the first instance the Government directed that the penalty attaching to that default should be realised. On an explanation being submitted the penalty was remitted. That is the only case that I can recall in respect of a default made by the Corporation in the payment of interest on a loan due to Government. I do not think, Sir, that a case of this kind is likely to occur again after the precautions which the Corporation will no doubt take.

"But supposing for argument's sake it were admitted that what has taken place in the past might occur in the future, then there are the provisions of the Bombay section, which are embodied in my amendment. And these provisions are much less drastic than those which find a place in the Bill. The Bombay section provides, and my section is an exact reproduction of the Bombay section, that in the event of default being made by the Corporation in respect of the payment of interest on loans due to Government, the Chief Secretary to Government may direct any officer of the Government, not being a municipal authority, to attach any money which may be in or which may come into his possession belonging to the Municipality; and if the arrears due to Government cannot be recovered in that way, then the municipal funds and the rates and taxes may be attached. There is thus an intermediate stage. You do not attach under the Bombay Act the municipal funds and the rates and taxes at once, but an order is issued in the first instance by the Chief Secretary to a Government servant to attach any municipal moneys that may come into his possession; and if the arrears due are not thus recovered, then the extreme step of attaching the municipal funds in payment of the debt due is resorted to. Why should we avoid this intermediate stage? Why should we have a more drastic law for Calcutta than what has been found sufficient for Bombay? Let me point out that the section in the Bill is an exact reproduction of section 6 of Act II of 1879; that is a Government of India Act. The section in the Bombay Act occurs in Act III of 1888 of the City of Bombay, and thus we have this fact that the section in the Bombay Act was enacted subsequently to the section in the Government of India Act. In other words, I am entitled to the conclusion that the Bombay Legislature, having section 6 of Act II of 1879 before them, deliberately enacted a section less stringent and less drastic. They thought that a milder section would answer their purpose, and they have not been mistaken, because the section has not been modified in a subsequent amendment of the Bombay Act.

"We cannot be too careful in dealing with matters which affect the public credit. I am sorry to have to say that the credit of the Corporation is not what it ought to be. The other day the Municipal Commissioners invited tenders for a loan of 25 lakhs of rupees, and how much did they get? The offer came to about 3½ lakhs, and they were obliged to go down so far as to accept offers

of Rs. 95. I know not what may be the secret influences at work, but there is this fact that the credit of the Corporation at the present moment is not what it should be. I am perfectly aware of the fact that there is a proviso in the Bill which gives preference to the claims of the public creditor; but I venture to assert that public credit is such a delicate plant that we have to exercise the utmost care in dealing with it, and that nothing should be done which would prejudicially affect it. When it is open to you to have recourse to a mild measure which may and will ordinarily be sufficient for your purposes, why have recourse in the first instance to the severe measure when the adoption of the mild measure does not preclude its subsequent adoption? It seems to me that it is only proper and wise that the milder alternative should first be adopted in preference to the severer one; and when we have failed by the adoption of the milder alternative, then adopt the extreme remedy. You are not deprived of it by my amendment. You are called upon to postpone it till you have tried the milder remedy. That is what I venture to suggest. If it is necessary to safeguard the interests of the Government, adopt the Bombay provision, which provides that, in the event of default being made, a Government officer is to attach any money which belongs to the Municipality which may come to his possession, and if that money is not available to him, or if that money is not sufficient to cover the default, then go and attach the municipal funds and the rates and taxes. I have had an opportunity of talking this matter over again with former members of the Corporation, and they think that it is a dangerous provision, and may interfere with the credit of the Corporation; and therefore I ask that the Bombay section be adopted."

The Hon'ble MR. BAKER said:—"With reference to the last words that fell from the Hon'ble Babu Surendranath Banerjee that there is some risk that this provision might affect the credit of the Corporation, I would remind the Hon'ble Member that Mr. Turner and Mr. Spink were both members of the Select Committee, and this question was very fully discussed in their presence, and it was pointed out that the section in the Bill contains a proviso which absolutely safeguards all existing loans from being prejudiced by such attachment. That proviso says:—

'Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the Funds before any part of the proceeds is applied to the satisfaction of the debt due to the Government.'

"How, in the face of a provision like that, any prejudice could be caused to existing debts or to the credit of the Corporation I really cannot understand.

"I will briefly explain to the Council the origin of this section. In July last year the Corporation, as the Hon'ble Member has pointed out, made default in paying the instalment of interest and principal on its loan due to Government, and the matter had to be referred to the Government of India. On looking into the matter the Government of India noticed that in the present Act there was no provision by which Government could recover a debt due to itself. Neither in the present Act, nor in the old Act of 1876 nor in the Bill was there any such provision, and the result was that, in the event of default, Government would have been obliged to bring a suit against the Corporation in order to recover its instalments of interest and principal. It seemed to the Government of India that a civil suit by the Government against the Corporation was not a suitable remedy, and they, therefore, instructed the Local Government to introduce a section in the Bill corresponding to section 6 of the Local Authorities Loans Act of 1879, to enable Government in case of default to attach the funds of the Corporation, and apply them to the repayment of the debt, but not so as to prejudice any previous debt for which the funds were applied; and they pointed out that in Bombay there was a similar provision in sections 99 and 107. The Select Committee gave effect to these proposals of the Government of India, and this section is the result. The Hon'ble Babu Surendranath Banerjee has not argued that the section ought not to be there. He has not argued that Government ought not to have any power of recovering a debt. But he has laid great stress on the fact that we have not incorporated a particular provision in the Bombay Act, which is to the effect that when there is a default the first step is to issue an order

to some Government officer to attach any money due to the Municipality from Government which may be in his possession, and that, until that first step has been taken and found to be infructuous, the second stage of actual attachment of the municipal funds does not come into operation. I do not know exactly how that particular provision may work in Bombay. In Bombay there is only the Local Government. There are not two Governments, the Local Government and the Supreme Government; but here in Calcutta it would be extremely inconvenient, and, I may say, nugatory. The principal sums which are payable by Government to the Corporation are the rates and taxes payable on the various Government buildings which it occupies either as owner or occupier. There are hundreds of these buildings scattered all over the town. Some of them are in charge of various departments of the Government of India; some of them are in charge of various departments of the Local Government, and the rule is that each officer who is in charge or in occupation of a particular building has to pay, out of his official funds, the municipal taxes on that building. The result would be that if we adopted this Bombay system, in the event of there being default, we should have to issue orders to hundreds of officers all over Calcutta, including officers not subordinate to the Local Government at all, to detain the payment of municipal rates and taxes which might at that time be in their hands; and it would not be until we had got replies from all of these and added up all the various small sums that were due, and found them not sufficient to cover the amount due, that we could resort to the second stage. It is absolutely unpractical and inconvenient. We have simply carried out the perfectly equitable and reasonable instructions of the Government of India and supplied what is undoubtedly a defect in the present Act."

The Hon'ble Mr. OLDHAM said:—"I am quite unable to understand the fervour which my hon'ble friend Babu Surendranath Banerjee has shown in this matter. If this provision was to be retrospective in effect, I could do so; but it is for future loans. Looking at the matter in the very narrowest way, it will be acknowledged that the present loan from Government is very small, and therefore that there are likely to be very few loans from Government. It must also, I think, be taken that there is no compulsion on Government to make these loans, and that it may make them on what terms it pleases. So the effect of having these provisions laid down in the law will be that there will be a small bond or receipt when a loan is taken from Government instead of one of those long indentures with which it is the practice now for the Solicitors to the Corporation to favour us and for which we have to pay. The Hon'ble Babu Surendranath Banerjee has referred to the waning credit of the Corporation as evidenced by the falling through of the last loan. The loan did fall through in a very unexpected way; but it happens that in 1897, when I was not a member of the Corporation, the Corporation tried to float a loan for 25 lakhs and 10 lakhs fell through. The agitation referred to as possibly having been the cause of the present loan falling through, and of what is called the 'waning credit of the Corporation,' had not arisen. Last year, when that agitation was at its height, the Corporation floated a loan of 25 lakhs on the most favourable terms, and even on more favourable terms than Government had secured, and on far better terms than the Bombay Corporation was able to secure. Again, in March last the Corporation was able to float a small loan, I think it was 5 or 10 lakhs, and the terms obtained were most unexpectedly high. We attribute these fluctuations not in any way to the waning credit of the Corporation, but to the present state of the currency problem, by which we see that Government securities are falling and exchange is rising in a way which is entirely unexpected."

The Hon'ble Mr. ARCAR said:—"I think my friend the Hon'ble Mr. Oldham has not exercised a very keen sight if he thought the suggestion of my friend the Hon'ble Babu Surendranath Banerjee related to this agitation as having had any influence on the financial situation of the Corporation. I do not see how it could affect this question at all. With regard to the proceedings of the Loan Committee, of course we are not here to discuss them, although I think it was unfortunate that they accepted the rates they did accept. However, I do not like to give a silent vote with regard to this amendment, but I have no intention of going

into the matter because my hon'ble friend Babu Surendranath Banerjee has dealt with it. I do not wish to expand upon what he has said already to the Council, but I do not wish to be misunderstood. I say that I support the Bombay system in this connection.

"Sir, inasmuch as no other amendments appear in my name after section 100 (*now* 107), I may be permitted to make a personal explanation. I have come to the consideration of this Bill only very lately, and the task has been an exceedingly heavy one. Although it was intimated from the Chair that I succeeded to the labours of my predecessor as member for the Corporation, yet his head has not been placed on my shoulders, and I have had to do everything afresh for myself. So that, although I have given a great deal of time to the subject, I have not been able to keep up with the work that has been proceeding, and I have had other matters to attend to besides. Partly on this account, and partly in view of the current of decisions on the amendments that have been proposed, I have not sent in any amendments with relation to the further sections of the Bill. I hope it will not be understood that I acquiesce in everything subsequent to section 100 (*now* 107). I shall give my support, where I find that I can do so, to such of my hon'ble friends who have sent in amendments.

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"The Hon'ble Mr. Oldham, in replying to some part of my observations, remarked that it was incomprehensible to him how I could show so much fervour in connection with this matter. I will proceed to give him the explanation. I may remark that I show considerable fervour in connection with all matters appertaining to the Calcutta Municipal Bill, and, if I have displayed some little extra fervour in connection with this matter, it is because the provisions appear to me to be unnecessarily stringent and drastic. I consider the provisions of the Bombay section as being amply sufficient for all purposes, and the Government is needlessly making the Bill unpopular by making this section more stringent than it ought to be. My hon'ble friend in charge of the Bill has referred to the practical difficulties in the way of giving effect to the Bombay section. There are the offices of the Government of Bengal; there are the offices of Government of India; each office pays its own municipal rates, and it would be difficult to get together all these rates, and therefore it would be impossible to direct any particular Government officer to collect all these rates in satisfaction of any arrears that may be due to the Government. Sir, to this I have a simple reply to give. If the Hon'ble the Chief Secretary were to write a letter to the Accountant-General requesting him to ascertain the various Government offices which pay rates and ask those offices not to pay them, but to send them on to the Accountant-General, will there be any serious practical difficulty?"

The Hon'ble MR. BAKER said:—"I am afraid there would. The Hon'ble Member is not acquainted with the official system, and I can assure him that the Accountant-General would decline to do that. He would say it was not his duty."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If an order was issued by the Government of Bengal, the Accountant-General would decline to do it. I cannot understand it. If the Lieutenant-Governor were to direct the Chief Secretary to issue an order to the Accountant-General, it would be in the nature of a mandate which the Accountant-General would be bound to give effect to. I cannot conceive how it is possible for the Accountant-General not to carry out such an order."

The Hon'ble MR. BAKER said:—"The Accountant-General is an officer of the Government of India. He is not under the orders of the Local Government."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am thankful to my hon'ble friend for this information, and I will change my position somewhat. If my hon'ble friend the Municipal Secretary were to direct the various offices which paid rates to the Corporation to withhold payment of those rates and to

send them on to him to be held in deposit by him in satisfaction of a debt due to Government, would there be any difficulty ?”

The Hon'ble Mr. BAKER said:—“ I am afraid there would.”

The Hon'ble BABU SURENDRANATH BANERJEE said:—“ In that case, if I may say so, I am prepared to cut the Gordian knot. I can suggest a simple remedy which I think would be a solution of the whole difficulty. My hon'ble friend in charge of the Bill is probably aware that the Port Trust pay about 1½ lakhs or more every year to the Corporation in the shape of rates. Could not that be attached at once? I think that would cover whatever dues the Corporation has to pay to the Government in respect of loans. If my hon'ble friend will accept this suggestion, I am prepared to modify my amendment upon these lines.”

The Hon'ble Mr. BAKER said:—“ That would not be money due by Government to the Corporation.”

The Hon'ble BABU SURENDRANATH BANERJEE said:—“ They could be attached by Government. Here is the Port Trust which pays to the Corporation 1½ lakhs of rupees every year. If the Corporation make default to the Government in respect of the payment of any interest upon any loan, is it impossible for the Municipal Secretary to write to the Port Trust to hold this money in deposit and not to pay it to the Corporation in order that it might subsequently be paid in satisfaction of the interest due to Government. I do not really think, Sir, the difficulties are insuperable, and, if the difficulties are not insuperable, then I say it is most unwise to have a drastic provision like this. I do not think I need further occupy the time of the Council.”

The Hon'ble BABU SURENDRANATH BANERJEE proposed the addition of the words “ of the Port Trust ” after the words “ officer, municipal authority or office ” in sub-section (1) of the proposed section 133B.

The Hon'ble BABU JATRA MOHAN SEN said:—“ Having regard to sections 114 and 118 (now 121 and 125), as to how the Budget is to be framed and how provisions are to be made as to the payment of these loans and interest, I do not see how any occasion can arise as to attaching the funds in the hands of the Corporation. The section is obnoxious and ought to be avoided as much as possible, if it can be avoided without any difficulty arising in the way of realising the interest due to Government on account of loans. The Chairman has been authorised to spend these moneys, and on one occasion, I understand, on account of an oversight of a clerk or some officer in charge, payment of the interest was not made.”

The Hon'ble Mr. BAKER said:—“ The Hon'ble Babu Surendranath Banerjee must have been misinformed. A default in payment of a large sum like this was certainly not due to any misconduct of a petty clerk. It was much more than that.”

The Hon'ble BABU SURENDRANATH BANERJEE said:—“ I used the words ‘ bungling in the office ’ and as a matter of fact it was owing to the change in the office of Chairman that the matter was lost sight of. Mr. Bright went away and Mr. Greer came in.”

The Hon'ble BABU JATRA MOHAN SEN said:—“ The Chairman being in charge of the funds, and being authorised to make these payments, and he being an officer of Government, I think no occasion will arise to make any such default. It has occurred once in 23 years. I think the provisions contained in other sections are sufficient to cover a case of this kind, and I should not desire that another obnoxious section should be inserted in order to meet the same object. The Chairman being in charge of the funds, and as it lies in him to pay this interest on loans, no occasion will arise to enforce this section 133B, and therefore it ought not to be enacted.”

The Hon'ble BABU JATRA MOHAN SEN's motion was then put and lost.

The Hon'ble BABU SURENDRANATH BANERJEE's motion in the amended form being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakh-
tyar Shah.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

SECTION 142.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following words be inserted after the word "may" in line 4 of section 140 (*now* 142):—

"with the approval of the Corporation."

He said:—"Section 140 (*now* 142) refers to the keeping of accounts and it provides as follows:—

'Accounts of the receipts and expenditure of the Corporation shall be kept in such manner and in such forms as the General Committee may from time to time prescribe.'

"I suggest that the accounts should be kept in such a manner and in such form as the General Committee with 'the approval of the Corporation' may from time to time prescribe. It is a matter of finance and the keeping of accounts, and I think, Sir, the forms which the General Committee may prescribe should be subject to the approval of the Corporation. It is a very small matter."

The Hon'ble MR. BAKER said:—"I am quite opposed to this amendment and have only one word to say about it. I take it there is not one single function for which the Corporation, a body of 50, can be less fitted than that of prescribing forms for keeping accounts. That can only be done by a single person. It cannot really be done in practice by the General Committee. It must in practice be done by the Vice-Chairman or Chairman."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I would point out that there may be in the Corporation experts in accounts, who may not have a place on the General Committee, and it is an advantage that such members should have an opportunity of giving the General Committee the benefit of their special knowledge. I thought it was a very small matter and the Hon'ble Member in charge of the Bill would see his way to accept it, but I find he thinks differently about it."

The Hon'ble BABU JATRA MOHAN SEN said:—"My amendment No. 99 is to the same effect, 'that in section 140 (*now* 142), last line, after the word 'may' the words 'subject to the control of the Corporation' be added; and, for the reasons put forward by the Hon'ble Babu Surendranath Banerjee, I beg leave to move this amendment. It is the same as my hon'ble friend's proposal, so I do not propose to speak separately on this."

The Hon'ble THE PRESIDENT said:—"I have no doubt if there was an expert in the Corporation who was not on the General Committee, the General Committee would gladly accept his advice in any matter of this kind."

The motion was then put and lost.

The last motion having been lost, the Hon'ble BABU JATRA MOHAN SEN, by leave of the Council, withdrew the motion, standing in his name, that in section 140 (now 142), last line, after the word "may" the words "subject to the control of the Corporation" be added.

SECTION 143.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for sub-section (3) of section 141 (now 143) the following be substituted:—

"(3) The auditors so appointed shall receive such reasonable remuneration, not exceeding in the whole ten thousand rupees *per annum*, as the Corporation may from time to time determine."

He said:—"Sir, the present law is contained in section 75 of the Municipal Act. It runs as follows:—

'All auditors acting under this Act shall in respect of each audit be paid such reasonable remuneration as the Commissioners in meeting shall from time to time determine.'

"Therefore, the payment of the fees is a matter which has now to be determined by the Commissioners in meeting. In Bombay the fees are fixed by the Corporation subject to a maximum of Rs. 10,000, which is not to be exceeded on any account. Here no maximum is fixed, and I propose to introduce a maximum on the lines of the Bombay Act. The present section has worked well. I only know of one case where there was a difference of opinion between the Corporation and Government in regard to the payment of the auditors. I think Government claimed Rs. 8,000 for the payment of the auditors; the Corporation wanted to pay only Rs. 7,000. After some little controversy the Corporation paid the sum demanded by the Government. I propose to modify the present Act upon the lines of the Bombay Act, so that, if necessary, the Corporation may pay the auditors a sum not exceeding Rs. 10,000. The Bill proposes that the amount to be paid to the auditors shall be fixed by the Government not exceeding the cost price. The General Committee is to be, so to speak, the conduit pipe for the payment of the amount. The General Committee is to receive the order from the Government. It is to have no discretion whatsoever. Government is to determine the amount to be paid by the General Committee, and the General Committee having received the order from Government is to carry it out. I hardly think that is a satisfactory state of things. The payment of the auditors is a matter which ought to be determined by the Corporation subject to such limitations as may safeguard the interests of the Government. For this reason it seems to me that we could do nothing better than adopt the provisions of the Bombay Act, leaving the matter to the discretion of the Corporation subject to a maximum which is not to be exceeded, namely, Rs. 10,000. The cost of the audit cannot, in any case, come up to more than Rs. 10,000, and, subject to this maximum, I maintain that the matter should be left to the Corporation, and they will decide what amount has to be paid."

The Hon'ble MR. BAKER said:—"The appointment of auditors must be made by some authority entirely outside the Corporation. That is provided for by the Bill. That being so, it seems necessarily to follow that the remuneration of the auditors should also be fixed by the same outside authority. That is the primary ground of objection I take to the amendment. As regards the amendment which the Hon'ble Member proposes, I at once admit that Rs. 10,000 is likely to be more than enough. I have no objection so far as that goes, but as a matter of principle I should object to Rs. 10,000 or any other limit being fixed. What has to be provided for is an efficient audit; since the auditors must be appointed by Government, their remuneration should be fixed by Government, and Government should charge the cost price whatever it may be. Why should we fix an arbitrary limit of Rs. 10,000 or any other arbitrary sum, whether that sum is likely to be sufficient or not?"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"My reply to the observations of the Hon'ble Member in charge of the Bill is very simple. The chief point taken up by the Hon'ble Member is this: the auditors being appointed by the Government, the payment should be determined by the Government.

My reply is that the auditors are now appointed by the Government, but the payment is made by the Corporation. Therefore it comes to this: that for the last forty years the principle which has been laid down by the Hon'ble Member in charge of the Bill with all the weight of his authority has been violated by the Government which has enacted our municipal laws, and no serious harm has been done; the world has gone on well enough in spite of these breaches of his principle; and it seems to me that, if the principle were to be further violated by the acceptance of my amendment, I do not think any serious harm would be done to any interest. I think in a matter of this kind we ought to move on the line of least resistance. What has been the law in the past in Calcutta has been the practice in Bombay. Let us follow the models that are before us. Let us not do something which is neither the one nor the other. I do not suppose the fees will exceed Rs. 10,000, and to be on the safe side I thought it right to fix a maximum which can under no circumstances be exceeded."

The Hon'ble THE PRESIDENT said:—"I do not know what the Hon'ble Member's experience about maxima is, but my own experience is that they are always worked up to; and, if you can get your work done for Rs. 7,000 but put a maximum of Rs. 10,000, you will surely find the bill go up to the Rs. 10,000. That is my experience. I only give it for what it is worth."

The motion was then put and lost.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for the words "General Committee," in line 1 of sub-section (3) of section 141 (now 143), the word "Corporation" be substituted.

He said:—"Since my previous motion was lost, I beg to move this one. The payment is to be made subject to the order of the Government, but I propose that the payment should be made by the Corporation, because it is the funds of the Corporation that are to be audited. The funds do not belong to the General Committee. I think that is the correct principle, if my Hon'ble friend will take his stand upon principles."

The Hon'ble MR. BAKER said:—"The funds are the funds of the Municipality; they are not the funds of the Corporation. The Corporation is only one out of three governing bodies. I cannot admit that principle."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"The finances of the Municipality are vested in the Corporation. The power of the purse belongs to the Corporation."

The Hon'ble MR. BAKER said:—"Subject to certain limits, and one of those limits is that payments under Rs. 10,000 are made by the General Committee. Of course this amendment has no real effect. The payment is a compulsory one which has to be made on the order of Government to the auditors who are appointed from outside. It makes no earthly difference in practice whether nominally the payment is made by the Corporation or the General Committee. It is purely a matter of sentiment. In order to be consistent, as the payment ordinarily will not exceed Rs. 10,000, why not leave it to the General Committee?"

The Hon'ble MR. APCAR said:—"The Hon'ble Member in charge of the Bill makes a distinction between the Corporation and the Municipality. I confess I cannot see any distinction. The Chairman is a member of the Corporation, the General Committee merges in the Corporation, and whatever sum is paid under the seal of the Corporation is from funds vested in the Corporation; and I cannot accept any distinction between the Municipality and the Corporation. Inasmuch as the funds are vested in the Corporation, I think they ought to have a right to deal with them."

The motion was then put and lost.

SECTION 145.

The Hon'ble BARU BOIKANTA NATH SEN moved that the following words be added to section 143 (*now* 145):—

"and shall bring such report before the Corporation for consideration at their next meeting."

He said:—"I venture to think that there will be no serious objection to this amendment, at least on the ground that it attempts at securing general subordination of the General Committee and of the Chairman to the Corporation. There can be no doubt about this, that the Corporation, as distinguished from the General Committee, has to find funds, and to impose the rates and taxes. No doubt the power of spending the money vests with the General Committee and the Chairman. The Municipality is thus placed—taking the Municipality as composed of these three different authorities—that the Corporation has to find the funds and the General Committee and the Chairman are to spend them. Then as to the accounts, section 140 (*now* 142) provides that the accounts of the receipts and expenditure of the Corporation shall be kept in such manner and in such forms as the General Committee may from time to time prescribe. The accounts have to be kept in that way. The accounts are to be the accounts of the Corporation. These accounts have to be examined under section 141 (*now* 143), and, when they are examined by the auditor, he is to submit his report, and that report goes to the General Committee and then to the Chairman as soon as may be after the completion of their audit. Section 142 (*now* 144), clause (c), says—

'as soon as may be after the completion of their audit, deliver to the General Committee a report upon the municipal accounts.'

"Then section 144 (*now* 146) provides that—

'It shall be the duty of the General Committee forthwith to remedy any defects or irregularities that may be pointed out by the auditors.'

"If there are any mistakes or irregularities pointed out, it would be the duty or the privilege of the General Committee to remedy those defects. The Council no doubt do not lose sight of this fact that the Corporation has something to do with it, and therefore naturally it has shown the courtesy to provide in section 143 (*now* 145) that the Chairman shall cause the report mentioned in section 142 (*now* 144), clause (c), to be printed, and shall forward a printed copy thereof to each Commissioner along with the papers mentioned. Individual Commissioners are to be furnished with this report; they are to get this information for their knowledge; but not the Corporation. Why should this information be given to these individual Commissioners only? Why should the Corporation be slighted and overlooked, and what is the object of this? I propose that the Chairman shall bring such report before the Corporation for consideration at their next meeting. If this information is to be given to individual Commissioners and if the Corporation itself should acquire this knowledge through these individual Commissioners, why should this body, which has the responsibility to find the funds and have their accounts kept in their name, be deprived of its inherent power of discussing these matters? Under the law, as provided in this Bill, they can have no control over the General Committee or the Chairman. There is no apprehension of their being brought under general subordination; they would simply have a right to discuss. The effect is simply to have a moral influence. Nothing further than that is intended. Is it not desirable, just, proper and expedient that this body, which is responsible for the funds, who would be financing, properly speaking, should have this right of deliberating over the report of the auditor and have a discussion, and have their deliberations recorded? They will not have any right to say to the General Committee or the Chairman—Such and such defects and irregularities have been pointed out and will you please correct them. They will simply have this right, as it were, of discussing the matter, and my amendment seeks only to restore to them, as it were, the power which they are being deprived of discussing the report. I think, therefore, Sir, that this amendment is a simple one which ought to be accepted."

The Hon'ble MR. BAKER said:—"I am ready to accept the amendment."

The motion was put and agreed to.

SECTION 146.

The Hon'ble BABU SURENDRANATH BANERJEE moved that at the end of section 144 (*now* 146) the following words be added:—
 "and to report the same to the Corporation."

The Hon'ble MR. BAKER said:—"The Hon'ble Babu Boikanto Nath Sen's motion is that the report is to be laid before the Corporation for its consideration. This amendment is that the General Committee, having carried out any defects pointed out by the auditors, are to report having done so to the Corporation. They are not the same thing, but I am quite ready to accept this amendment also."

The motion was put and agreed to.

The Hon'ble BABU JATRA MOHAN SEN moved that the following proviso be added to section 144 (*now* 146), namely:—

"Provided that, if the General Committee or the Corporation are of opinion that the report of the auditors is not correct as to any matters, they may, without unreasonable delay, represent their views to the Local Government, and suspend remedying the defects or irregularities as to those matters until the decision of the Local Government is received."

He said:—"Section 144 (*now* 146) as amended by the last amendment runs as follows:—

'It shall be the duty of the General Committee forthwith to remedy any defects or irregularities that may be pointed out by the auditors and report the same to the Corporation.'

"To this I wish to add the proviso I have just moved. My experience has been in mufassal municipalities that in cases in which the auditor found and reported on many matters which occurred to him were irregularities or defects, they turned out afterwards to be not really so. The Government and the Commissioner of the Division agreed with the municipality that as a matter of fact the defects or irregularities pointed out by the auditors on more than one occasion were not really defects or irregularities at all. Now that we have accepted the amendment of the Hon'ble Boikanta Nath Sen to section 143 (*now* 145), I understand that the Corporation has a right to pass some opinion as to those reports, and, that being so, I think it is fair that if a general body like the Corporation find that as a matter of fact defects and irregularities pointed out by Government auditors are not really so, and if they entertain any sort of strong opinion on the matter, they ought to be empowered to represent their views to the Local Government, and to suspend the remedy of such defects and irregularities till the Government order is received. I think this will commend itself to the Council."

The Hon'ble MR. BAKER said:—"This is an absolutely unpractical amendment. The audit of the accounts and the keeping of the accounts are purely technical matters, and it seems to me that the suggestion that the General Committee and the Corporation should be invited to dispute the advice and recommendations of their professional advisers in a matter like this, is not one that can be seriously discussed."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Sir, I am prepared to support the amendment of my hon'ble friend Babu Jatra Mohan Sen. In regard to the recommendations which are from time to time made by the auditors appointed to audit the accounts of mufassal municipalities, we find that mistakes are sometimes committed. Sir, I happen to be acquainted with a mufassal municipality, and I distinctly remember some years ago certain recommendations being made by the auditors which we did not consider to be useful. We ventured to call in question those recommendations, and we did not give effect to them. Things of that kind take place—I will not say constantly—but they do take place. Therefore, Sir, with all the respect that I feel for experts in regard to all matters, it is conceivable that the recommendations made by the auditors may not commend themselves to the General Committee.

I think, Sir, that is a state of things which is conceivable, and it is not to be brushed aside in a summary fashion as has been done by the Hon'ble Member in charge of the Bill. I may say—and I think my hon'ble friend, Mr. Apar, will be able to corroborate my experience—that we have not always been satisfied as members of the Corporation with the audit that has been made. I will call my friend's attention to one matter—the Entally Workshop. Year after year the accounts of the Entally Workshop are audited by the Government auditors. They were passed by them, and we were naturally led to think that everything was right and proper; but then, Sir, the whole thing was overhauled at the instance of an independent member, and we discovered discrepancies and things worse in the accounts which led to a complete examination of that institution. Therefore, I do not think we ought to regard auditors as being absolutely infallible, and, if we do not regard them as such, the General Committee ought to be permitted to suspend action being taken upon the statement of the auditors. Under these circumstances, it seems to me that the recommendation of the Hon'ble Babu Jatra Mohan Sen after all is not so unreasonable as the Hon'ble Member in charge of the Bill assumes it to be."

The Hon'ble MR. APCAR said:—"I entirely endorse what my friend has said, and I think it would be advisable to have this proviso. It does not mean that the Corporation will have power to disregard the auditors' recommendations of their own responsibility or of their own knowledge, but it may be that they are able to bring to the consideration of the subject independent opinion which would be convenient to Government to consider. Under these circumstances, I support the amendment."

The Hon'ble MR. MACKENZIE said:—"I am entirely opposed to this amendment on the ground stated by the Hon'ble Member in charge of the Bill. We are not legislating here for the mufassal. We have expert auditors, and my experience, which is by no means limited, is that their audit is generally satisfactory. The Hon'ble Babu Surendranath Banerjee referred to a discrepancy, but he gave us no details, and it is quite possible that it may have arisen in stock-taking which is not the auditor's duty. The stock is taken for him, and he accepts the stock in the books, and it is quite possible the discrepancy may have arisen in respect of the actual stock."

The Hon'ble MR. OLDHAM said:—"I, too, think that my friend the Hon'ble Babu Surendranath Banerjee is not speaking exactly to the point which was referred to by the Hon'ble Member in charge of the Bill, when he opposed the motion. I, too, have had personal experience of the auditors in the case of mufassal municipalities and wards' estates, but the recommendations which these gentlemen are in the habit of making are quite different from the absolute defects which would be pointed out by such auditors as we should employ in Calcutta, and it is the case that in regard to the Entally Workshop the discrepancies and frauds entirely referred to stock-taking, and not to the keeping of accounts."

The Hon'ble BABU JATRA MOHAN SEN, in reply, said:—"With regard to the remarks that have fallen from the Hon'ble Member who represents the Chamber of Commerce, I submit that the mufassal auditors are as much experts as the auditors employed to examine the accounts of the Calcutta Corporation. There is no difference whatever. My amendment will not raise any difficulty whatever in remedying defects or irregularities complained of. All that I propose is a very moderate proposition, namely, that the remedying of defects and irregularities be suspended till the decision of the Government be obtained. After Government is placed in full possession of facts and figures supplied by the Corporation and the General Committee, I do not know how any practical difficulty will arise as to the carrying out and remedying the defects and irregularities pointed out by the auditors, if they really turn out to be so when the Government has fully considered the whole matter on full information received. There will be no practical difficulty, and I venture to think that this amendment ought to be carried."

The Hon'ble the PRESIDENT said:—"I would only point out before taking the vote that this duty of the General Committee is performed under the control of the Corporation and the Local Government, and the only authorities to enforce this duty upon the General Committee are, first, the Corporation, and, secondly, the Local Government. If the Local Government or the Corporation were of opinion that there was a sufficient reason for not carrying out the suggestions of the auditor, they would not enforce the duty, and therefore it seems to me that the section is quite sufficient, because the duty will only be enforced in those cases in which the superior authorities are of opinion that the suggestions of the auditors should be given effect to."

The motion was then put and lost.

SECTION 150.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 148 (*now* 150), line 2, after the word "worship" the words "or for charitable purposes" be added, and that sub-section (2)* be omitted.

He said:—"The object of this amendment is to place buildings and land used for the purposes of public charity precisely on the same footing as lands or buildings used for the purposes of public worship. It will be observed that, under the section as it stands in the Bill, it is obligatory upon the Corporation to exclude from assessment all buildings used for purposes of public worship and public burial or burning grounds duly registered under Chapter XXXV (*now* XXXIX), but it is in the discretion of the Corporation to make a similar exemption in the case of buildings or land used for purposes of public charity. I find from the Bombay Act, section 143, that the two classes of buildings, namely, those used for public worship and those used for the purposes of public charity, are placed on the same footing; and, as it seemed to me to be desirable that the Corporation should promote public charitable objects, I have thought it right to put this amendment before the Council. I am bound to say that the words 'public charity' in the Bombay Act have led to considerable difference of opinion; indeed, a question was raised there some time ago whether or not the University of Bombay was a Corporation which existed for purposes of public charity within the meaning of that section; and two eminent Judges of the Bombay High Court held that the University came under the section and was entitled to exemption (I. L. R. 16 Bom. 217). If my amendment is carried, there will be, at least, two institutions which will be benefited, namely, the University of Calcutta and the Indian Association for the Cultivation of Science; and I venture to think that, as the Municipality has done nothing directly in the way of encouraging education, it may do so indirectly."

The Hon'ble MR BAKER said:—"The Hon'ble Member the mover of this amendment is quite right in saying that in Bombay buildings used for charitable purposes are exempted from the payment of rates, but I think it is wisest to follow the precedent of the English law on the subject. The leading case is that of St. Thomas's Hospital in London. It was fought out before four Judges, and it was fought out at great length, and I think we ought to stand upon a principle which has become settled and recognised law. Moreover, I submit that to accept this amendment would give rise to great practical confusion and doubt in determining which portions of a building are used for charitable purposes and which are not. That is what I am informed by the Vice-Chairman of the Corporation."

The Hon'ble MR. HANDLEY said:—"I observe that the Hon'ble Member has not even qualified his amendment by using the term 'public charity.' In clause (2) of section 148 (*now* 150) a discretion is given to the Corporation to exempt buildings or lands used for purposes of public charity, but here merely the words 'charitable purposes' are used. Such a provision may open a door to abuses of all kinds. There are mosques and musjids so-called and religious *muths* in which the families of the resident-priest or mullahs remain."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I am prepared to qualify my amendment by the insertion of the word 'public' before 'charitable purposes'."

* The sub-section (2) here referred to forms part of sub-section (1) of section 150 of the bill as passed.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I must oppose this amendment, as I feel certain that it will lead to serious complications. The present law is that places of public worship and burial and burning grounds are exempted from the rates; and even such a simple phrase as 'places of public worship' has given rise to considerable inconvenience, and at this moment a case is pending in this connection. The case is one to which I called attention the other day. It is the case of Babu Jadoolall Mullick's temple. It is urged that this temple is a place of public worship; the Corporation holds that it is a place of private worship, and a controversy is going on. It is right I should add for the good name of the Corporation that it has been most generous in dealing with the taxation of public charities. Under the present law we cannot exempt public charities from the payment of rates; but applications are constantly coming up asking for such exemption. The Loretto Orphanage, the Mayo Hospital, and many other cases I could mention, have made such applications and have made them with success. Well, under the law, we cannot make an exemption, but we make a contribution corresponding to the whole or half the amount of the consolidated rate payable by such charities, and we thus give them relief. We go about in a circuitous fashion, and in that way we do what the requirements of justice demand. I find that the municipal law as it prevails in the mufassal is in accordance with the law in Calcutta. Section 87 of the Bengal Municipal Act says that the tax shall not be assessed in respect of the occupation of any building used exclusively as a place of public worship or as a burial or burning ground. Not so in the case of public charities. If a municipality wants to exempt any place of public charity from taxation, it becomes necessary to take the sanction of the Local Government before it can do so. It records a resolution in favour of exemption, and then takes the sanction of the Local Government. This Bill is in advance of the existing law. Under the existing law we cannot exempt any place of public charity; under the Bill a discretion is given, and my hon'ble friend the mover of the amendment should be satisfied with it; because, if all places of public charity were to be exempted, all sorts of complications would arise. Charities would be started with the simple object of obtaining exemption from the payment of the rates, and then, as soon as the object was attained, they would disappear altogether as charities. Therefore, it seems to me that to enact a provision of this kind, to make it the law of the land, will open a wide door to fraud. I am perfectly certain that my hon'ble friend does not want such a result, and I hope therefore that, having regard to the present practice of the Corporation which I have explained, he will withdraw this amendment. I am in perfect sympathy with the next two amendments* of which my hon'ble friend has given notice."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"The point of difference between myself and my hon'ble friend is a very small one. He says that a discretion should be given to the Corporation in this matter. My view is that places of public charity should be placed on the same footing as places of public worship and that both should enjoy statutory exemption."

The motion being put, the Council divided as follows:—

Ayes 4.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 14.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Dela-
war Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendments were lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that the following proviso be inserted in section 148 (*now* 150), namely:—

“Provided that the following buildings and land shall not be deemed to be used exclusively for public worship or for purposes of public charity within the meaning of this section, namely:—

- (a) buildings or land in or on which any trade or business is carried on; and
- (b) buildings or land in respect of which rent is derived, whether such rent is or is not applied exclusively to religious purposes or purposes of public charity.”

He said:—“This provision is taken from section 143 of the Bombay Act, and its object is to restrict the operation of section 148 (*now* 150) of the Bill to lands and buildings *exclusively* used for religious or public charitable purposes. Such a restriction is obviously needed to protect the Corporation from unfounded and fraudulent claims for exemption.”

The Hon'ble MR. BAKER said:—“I think this amendment is a distinct improvement, and I hope it will be accepted.”

The Hon'ble BABU SURENDRANATH BANERJEE said:—“I support the amendment.”

The motion was put and agreed to.

SECTION 151.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for clauses (a) and (b) of section 148A (*now* 151) the following be substituted:—

“the estimated gross annual rent at which any building (including a hut or shed) or land liable to the consolidated rate under this Act might reasonably be expected to let from year to year shall be deemed to be the annual value of such building or land:”

and that the words “under clause (a)” in proviso (ii) to section 148A (*now* 151), and the whole of provisos (i), (iii) and (iv) to the same section, be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that, if the last amendment be lost, the words “three and-a-half” be substituted for the word “five” in line 4 of clause (b) of section 148A (*now* 151), and that the words “and less ten *per cent.* for the cost of repairs” be inserted after the word “any” in line 8 of clause (b) of section 148A (*now* 151).

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 148A (*now* 151), clause (a), the words “erected for letting purposes or ordinarily let” be omitted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that clause (b) of section 148A (*now* 151) be omitted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that, if the last amendment be lost, in section 148A (*now* 151), clause (b), for the words “deemed to be five *per cent.*” the words “the amount derivable as interest, calculated according to the highest rate of interest payable on Government securities,” be substituted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 148A (*now* 151), proviso (iii), for “of five *per cent.*” be substituted “according to the rate stated in clause (b).”

The Hon'ble BABU SURENDRANATH BANERJEE said:—“I regard this as a very important part of the Bill. Section 148A (*now* 151) of the Bill is section 122 of the present Act, and I may add that an animated debate took place in this Council on the occasion of the introduction of this section of the law in 1888.

"The object of my amendment is to restore the law to what it was in 1888. The law of assessment in 1876 provided that the annual value of a house or building shall be the lettable value of that house or building, the rent which that house or building is expected to fetch from year to year. That was the law of assessment in 1876, and it was the law of assessment in the Act of 1863. Thus this principle of assessment has been in force from 1863 to 1888, and then the law was changed. The principle of assessment as regards rented houses is kept intact under the law of 1888, but the principle has been changed as regards residential houses. The principle which then for the first time was enacted as the law of the land is this: the annual value is to be 5 per cent. on the present estimated cost of the building *plus* the value of the land *minus* a certain sum to be allowed for purposes of deterioration. This is the present law of assessment as regards residential houses. It is this principle of assessment as regards residential houses that I venture to assail in this Council. It was indeed introduced by no less an authority than Sir Henry Harrison. It was said by him, in justification of this new law of assessment, that it is difficult to ascertain the annual valuation of residential houses in accordance with the principle laid down in the law of 1876, and the result was that houses in the northern portion of the town were considerably under-assessed. Even if that were admitted for the sake of argument—I am not prepared to accept it as a correct statement of the facts—is it a justification for the gross over-assessment of residential houses all over the town under the present law? I venture to challenge the statement that there has been any difficulty felt in assessing residential houses in accordance with the principle of assessment contained in the law of 1876, and I shall be able to quote in support of this statement no less an authority than that of Sir Richard Garth, late Chief Justice of Bengal. He said in one of his judgments:—

'The principle of rating which the Commissioners follow at present (the principle of the law of 1876) is the same as that which is adopted in England, and similar difficulties arise there in the case of great buildings and mansions erected for residential purposes and not for sale, but these premises are constantly being rated at their letting value.'

"He goes on to say that the principle is a good and workable principle. I go further than that. I contend that the principle of assessing residential houses under the law of 1888 is a principle which in its practical operation is beset with serious difficulties, and I am prepared to quote in support of that statement the authority of the municipal Executive itself. I will quote an extract from the Annual Administration Report of 1889-90, page 53:—

'A totally new system of assessment has been introduced in respect of houses occupied by the owners, that is, fixing a percentage on the estimated present cost of rebuilding a house. For the proper working of this section it is necessary to find out how the estimated present cost of rebuilding a house is to be calculated. Is it the sum which a European or a native contractor would charge or the owner himself would spend? How are the materials to be valued? Many old houses are built with materials which are now not procurable in the market. Are other and more costly materials to be substituted in their place? Then, again, what is a reasonable amount to be deducted for depreciation? Upon what principle is this depreciation to be calculated? It is difficult to find a standard by which depreciation can be ascertained. There is nothing in the law to indicate it. The executive officer has to work the law as he finds it, and he is in no way responsible for its shortcomings.'

"That is the deliberate statement of the responsible executive head of the Corporation, as it appears in the Administration Report for 1889-90. Therefore, I am entitled to hold that, in the practical working of the principle contained in the law of 1876, there has been no difficulty, and that whatever difficulties have been felt have all been felt in consequence of the change of the principle of the law of 1876, and the adoption of a different principle which finds a place in the law of 1888. In this connection I will, with the permission of the Council, quote an extract from a report which was laid before the Select Committee on the Bill of 1888—a report which was made by a Committee of the House of Commons over which Mr. Goschen presided. Mr. Goschen is one of the greatest financiers of the age; he is now the first Lord of the Admiralty

and a Cabinet Minister, and an undoubted authority on all financial questions. This is what he said with regard to this principle:—

‘When it appears to the assessing authority that for special reasons a building cannot be fairly valued according to the annual rent which a tenant might reasonably be expected to pay for it, it shall be valued in the following manner:—

the gross value of any such building shall be a sum equal to 4 per cent. on the capital sum which a purchaser might justly be expected to give for such a building in its actual state and existing mode of occupation.’

“Therefore, it comes to this,—and I attach very great importance to the report of Mr. Goschen’s Committee, and I am quite sure the Council will attach the greatest importance to the report of a Committee presided over by so distinguished an authority as Mr. Goschen,—that ordinarily the annual value should be the lettable value of the building or house; but if, for special reasons, it is difficult to ascertain the lettable value, then the annual value should be taken to be the market value of the house or building. This question of the market value was raised by Dr. Guru Das Banerjee in 1888. He pressed Sir Henry Harrison to accept a percentage upon the market value of the house or building in substitution of the present system of taking a percentage upon the estimated present cost of erecting the house or building, less a reasonable amount for depreciation; and at one stage of the discussion—I find from the Council Reports—Sir Henry Harrison held out hopes that he would accept that view, and he asked for an adjournment in order to consider the principle advocated by Dr. Guru Das Banerjee. Sir Henry Harrison, however, subsequently changed his mind and opposed Dr. Guru Das Banerjee’s amendment, and urged that the acceptance of the principle of taking the market value would be beset with far greater embarrassment than the principle contained in the Bill. I hope this Council will take a different view. I hope they will insist on the market value being taken as the basis of valuation, for in my opinion it is the only equitable way of proceeding to ascertain the annual value of a house or building. I base my case on the broad considerations of justice and equity; and if I am able to convince the Council that I have relied on such considerations, then I should be entitled to claim the verdict of the Council in support of my amendment. Take the case of a person who has purchased a residential house for Rs. 10,000, which is the market value of that house; he finds, however, that the assessment on that house is made upon a valuation of Rs. 15,000, in accordance with the principle which finds a place in the law of 1888. Is it equitable that he should purchase a house for Rs. 10,000, and have to pay rates on Rs. 15,000? And most houses have been purchased by those who reside in them; not many are built by persons for their own residence. Therefore, you practically call upon a very large number of the owners of residential houses to pay a sum which is fictitious, an exaggerated sum over and above what would be the assessment upon the market value of the houses in which they reside. This is a matter which deserves serious consideration. My hon’ble friend Dr. Asutosh Mukhopadhyaya has given notice of an amendment in this connection, and I hope the Council will accept that amendment—I hope the Council will give redress by accepting the market value of the house or building as the basis of assessment in substitution of the principle embodied in the law.

“It was said in the course of the debate in Council in 1888 that the principle accepted by Sir Henry Harrison, and embodied in the Act of 1888, followed the lines of certain principles laid down by John Stuart Mill in his Treatise on Political Economy. I desire to read an extract from Mill. Mill says:—

‘A valuation should be made of the house, not at what it would sell for, but what would be the cost of rebuilding it, and this valuation might be periodically corrected by an allowance for what it had lost in value by time or gained by repairs and improvements. The amount of the amended valuation would form a principal sum, the interest of which at the current price of the public funds would form the annual value at which the building should be assessed to the tax.’

“My contention is that the law of 1888—and it is a law against which I desire to record my protest—is not in conformity with the principles laid down by Mill. It was alleged by Sir Henry Harrison that in following those principles he adopted them in only a qualified form. If those principles had

been accepted, then the annual value would not be 5 per cent., but $3\frac{1}{2}$ per cent., of the estimated present cost of building, *plus* the value of the land. And furthermore there should have been a section exempting houses below a certain sum from payment of the consolidated rate. I have given notice of an amendment to that effect, and I understand the Hon'ble Member in charge of the Bill is prepared to accept that amendment. My contention, therefore, is that the present law goes beyond the principles laid down by Mill, and that, when critically examined, it will be found not even to be based on those principles. I go further and say that those principles are not applicable to the circumstances and conditions of life in this country. Mill regards a house-tax as a sort of income-tax, and so it is in London and the great towns of the United Kingdom. But I venture to assert that a house-tax in India is not in the nature of an income-tax. And I will tell you my reasons for holding this opinion. A Hindu builds a house in conformity with a deep-seated instinct of his nature; it is a wish nearest to his heart to build a house and leave it to his children and his children's children as a memorial of his love and affection for them. Sometimes he has not the money to build a house, but he incurs a debt in order to do so; the house, therefore, in many cases is not evidence of his prosperity. It often is an index of his indebtedness; for, as it happens sometimes, as soon as the house is built, he goes to the money-lender to mortgage it. The state of things in England is totally different. An Englishman does not ordinarily build a house; when he becomes wealthy, he builds a house and becomes the lord of a manor; his house, therefore, gives some idea of his income, and he ought to be taxed accordingly. The house of an Indian is, on the other hand, often an index of his indebtedness, and not of his income upon which he should be taxed. A house-tax may be in the nature of an income-tax in England; it is not so in this country. In Bombay the principle against which I am contending is not the principle of assessment; there the annual value is the lettable value. In the mufassal here it is the same. I do not know what the law in Madras is, but probably it follows the same lines. You have in Calcutta a law based professedly on the principles of political economy, but representing a great departure from those principles. It is based on considerations applicable to a house-tax, and not on those applicable to an income-tax. I hope I have made it abundantly clear that a house-tax in Calcutta is not, and cannot be, in the nature of an income-tax. I don't wish to remind the Council of the discussions which took place in this Council in 1888; they are more or less a matter of ancient history. I do hold that I am entitled to claim a reversal of the legislation of 1888 if I can show that a grievous burden, hard to be borne, has been thrown on the middle-class people in Calcutta. Soon after this section of the law of 1888 came into operation it was applied to Ward No. 6; and I have obtained a statement of the increase of assessment which took place at that time in consequence of the application of this section to that ward. I find that in the case of 139 houses the rate of assessment was increased in the proportion of from 1 to 10 per cent.; in the case of 264 houses it rose from 10 to 20 per cent.; in the case of 175 houses from 20 to 30 per cent.; in 162 houses from 40 to 50 per cent.; in 80 cases from 50 to 60 per cent.; in 35 cases from 70 to 80 per cent.; in 37 cases from 80 to 90 per cent.; in 27 cases from 90 to 100 per cent. There are increases even to the tune of 200 per cent. and more. In 13 cases the increase was from 110 to 120 per cent.; in 9 cases from 120 to 130 per cent.; in 5 cases from 140 to 150 per cent. Altogether there was an increase in the case of 1,177 houses. In 12 cases the increase was 250 per cent.; in 2 cases from 240 to 250 per cent.; and in several cases from 230 to 240 per cent. And the sum total of the assessment is thus summarised: Out of 2,018 houses there were 853 in which the assessment was raised from 1 to 50 per cent.; in 249 houses from 50 to 100 per cent.; in 80 cases from 100 to 200 per cent. The total increase was from Rs. 5,54,866 to Rs. 6,81,319; and then there were several cases pending. This, I submit, is the most convincing illustration that it is possible to adduce on the operation of this section of the law to which one can refer. A petition was presented in 1890 to the Local Government against the assessment sections of the law; that petition was made over to Sir Henry Harrison for an expression of his opinion. Sir Henry Harrison observed in a note on that petition that 'when the whole town had been re-valued under the

Act of 1888, the equity of the valuations might be tested by a Committee of Engineers and Surveyors; and if they found that residential houses occupied by their owners were exceptionally more highly valued than other classes of buildings, let redress be promptly given.' And that assurance was repeated by the Government of Bengal. The then Lieutenant-Governor, in a Resolution, observed that in his 'opinion this suggestion is one which may very properly be attended to if the owners of houses built for their own occupation should, when the present revaluation of the town is finished, still find that they have been unfairly treated.' The middle-class owners of residential houses have, I submit, been undoubtedly very unfairly treated. They repeat the complaint now which they made in 1890—they have suffered greatly; they are not rich men; the Government promised them redress—prompt redress; that redress has not yet been given."

The Hon'ble MR. BAKER said:—"An enquiry was promised."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I shall be satisfied with an enquiry. I shall rely with confidence on the judgment of a Commission of Enquiry. If the Hon'ble Member in charge of the Bill is able to give an assurance that an enquiry will be made by competent persons, I shall for the present be satisfied; for I know that, as the result of such an enquiry, it will be found that a grievous burden has been thrown on the owners of middle class houses built for residential purposes. I appeal to Your Honour for justice to these classes; they suffer from a serious and substantial grievance which ought to appeal to our strongest sympathies. I know that there is a difficulty in the way if this section of the law is remodelled on the lines I suggest. The municipal revenues will suffer; but I submit that no considerations of revenue should prevent justice being done to the suffering owners of residential houses, if they can legitimately claim it at Your Honour's hands, and to that justice I venture to think they are entitled."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"The object of the amendments which stand against my name is practically identical with the object of those just moved by my hon'ble friend. That object is to abolish the distinction which was for the first time introduced in the Act of 1888 between the modes of assessing the rateable value of buildings erected for letting purposes or ordinarily let and buildings erected for residential or other purposes. The present Bill reproduces faithfully the provisions of the Act of 1888, and it may, perhaps, be said that the system which has been acquiesced in for ten years may well be allowed to stand. But, Sir, as the present Bill has destroyed the vital characteristics of a system which has been cherished by the people for at least a quarter of a century, I feel that it would not be right and proper to accept, without question or contest, a system of assessment which, in my humble judgment, is absolutely unsupportable on principle.

"But, before I deal with the question of principle, I shall ask the Council to consider for a moment what is the precise distinction between the mode of valuing houses or buildings erected for letting purposes or ordinarily let and those erected for residential and other purposes. In section 148A (now 151), clause (b), it is provided that the annual value of any building not built for letting purposes and not ordinarily let shall be deemed to be 5 per cent. on the sum obtained by adding the estimated present cost of erecting the building, less a reasonable amount to be deducted on account of depreciation, if any, to the estimated value of the land valued with the building as part of the same premises. Clause (a), which deals with the mode of assessment of the other class of buildings, provides that the annual value shall be deemed to be the gross annual rent at which the land or building might reasonably be expected to let from year to year. Consider this for a moment. The case we are dealing with is the case of a house erected for letting purposes or which is ordinarily let; but, although at the time of the assessment the house may have been actually let, the actual amount of rent paid by the tenant is not to be accepted as the measure of the rateable value of the building, but it is the rent at which the building may be reasonably expected to let from year to year; it is not the

actual rent which is paid, but the rent which a hypothetical tenant may be expected to give for that house or building. With a clear conception of the distinction between clauses (a) and (b) of section 148A (now 151), let us now examine the grounds upon which this system of assessment is based and defended.

"It is urged, in the first place, that it is not fair to apply to a mansion, built for residential purposes, which the owner never intends to let, and which, as a matter of fact, is never let, a principle of annual value which in its terms applies only to buildings erected for letting purposes. It is said that to apply the principle in this way is nothing short of an attempt to include within the operation of the rule cases which by the very terms of the rule are excluded from its scope. Now consider for a moment that, even in the case of a building which is erected for letting purposes or ordinarily let, you do not proceed upon the basis of the actual rental, but only upon the basis of the rental which might reasonably be expected to be derived if the building was let from year to year. In other words, even in the case in which a building is actually let, you proceed upon the basis of the rental which might be derived from a hypothetical tenant. Is there, then, any good reason for the contention that as a mansion, built for residential purposes, is never let, you cannot take as the basis of your valuation the rental which might be paid by a hypothetical tenant? If you introduce the hypothetical tenant in the one case, what is there to prevent you from introducing the hypothetical tenant in the other case? Indeed, it seems to me that the two positions are absolutely inconsistent and irreconcilable.

"In the second place, it is urged by the defenders of the system that if we introduce the fiction of a hypothetical tenant, as we do in the case of a building erected for letting purposes, we are sure to land ourselves in a difficulty, as there are no data upon which we can proceed. It is said that there are buildings, whether built for residential or other special purposes, of which it would be impossible to find an occupier other than the owner himself. But the answer is, that the difficulty is not greater here than in the other case where you also introduce the hypothetical tenant. A concrete illustration which you will find reported in the Reports (I. L. R. 10 Mad. 38) will make it manifest that there is no special or particular difficulty here. In 1886, the Municipality of Madras assessed the Lying in Hospital, which was the property of the Government, at Rs. 12,000 a year. It was contended on behalf of the Government that the valuation was unreasonable beyond all bounds, because, if the premises were to be let, there was no private person who would pay Rs. 1,000 per month for these buildings, which were only suitable for the purposes of a hospital. It was even suggested on behalf of the Government that, if the lease of the hospital were put up to auction, it would not probably fetch more than a merely nominal sum. This contention was overruled and a decision given in favour of the Municipality on the ground that the true test of rateable value must be taken to be the rent for which the premises could reasonably be expected to be let to a hypothetical tenant who required the building for the purposes of a hospital, and that the Government must not be excluded from the number of hypothetical tenants who might be supposed to be willing and anxious to rent the premises. This view of the Madras High Court is in perfect accord with the current of English decisions, the last and the most authoritative of which was pronounced by the House of Lords so late as September, 1893 (App. Cas. 1893, page 562). It would not be fair for me, Sir, to pass over without mention a passage from the writings of the great economist Mill, which is relied upon by the supporters of the theory I am assailing, and a portion of which has just been read by my hon'ble friend Babu Surendranath Banerjee. The passage in question is to this effect:—

'The public were justly scandalised on learning that residences like Chatsworth or Belvoir were only rated at the imaginary rate of perhaps two hundred a year under the pretext that, owing to the great expense of keeping them up, they could not be let for more, and probably even they could not be let for that, and, if the argument were a fair one, they ought not to have been taxed at a 1.'

"Now, Sir, these words were written about half a century ago, and the subsequent course of events has amply showed that the difficulty to which

Mill alludes does not really exist if in assessing the rental you assess it upon the basis of what would be paid not by an actual but by a hypothetical tenant; and that is the principle which since the days of Mill has been adopted in England, has received the approval of the House of Lords in the case I have just referred to, and has been partially adopted by this Council itself in the case to which the provisions of section 148A (*now* 151), clause (a), are applicable.

"In the third place, Sir, I shall presently show that the system which was introduced in the Act of 1838, and which is faithfully reproduced in the present Bill, is based upon a fiction for which there is no justification either in fact or in principle. It is urged that when a person builds a mansion for residential or other special purposes the proper test is, not what the house might be let for, because it was never intended to be let, but what is the interest derivable from the capital sunk, as it must be assumed that, when the owner spent his capital, he must have intended to recoup himself fully by the benefits derivable from his occupation; in other words, the assumption is, that when a person has spent a certain sum upon the creation of the property, he would have been equally willing to have paid a reasonable percentage on the outlay as rent to a contractor willing to erect the property and let it out to him? I need hardly say that this is entirely mythical. A man often builds a house which suits his convenience more than the convenience of any other man, and, in building it, he may and often does spend more money in lavish ornamentation than he would do if he had intended it for tenants. Take one illustration more, viz., that of the hospital built by the Madras Government or the one now in course of construction in this city. Did the Government ever calculate that the amount of benefit to be derived was at least equivalent to the amount derivable as interest upon the capital sunk? But, if you introduce one fiction which is not founded on fact, you have necessarily to support it by another fiction equally baseless. Once assume that the person who builds a mansion sinks capital in the expectation of a profitable return, there is no room for retreat; you have further to imagine the rate of interest which he expects as profit. You readily assume this to be 5 per cent. I ask, if there is any basis for this arbitrary figure? Why not make it 4 per cent. or 6 per cent.? It would certainly be more rational to assume the highest rate of interest payable on Government securities. I have it on the high authority of Lord Chancellor Herschell that there is no foundation for the arbitrary assumption you make. In the case to which I have already referred he deals with this matter, and I shall venture to quote one passage from his speech:—

'It was said that a practice prevails of taking 5 per cent. on the cost, in the case of buildings, as a basis for arriving at the rental. Such a rule of thumb may be all very well where the premises would be likely to find competing tenants, but is not by any means necessarily applicable where it is thought that the owner would be likely to give a higher rental than any one else. It would often be obvious that he would never be willing to pay the rent arrived at in such a fashion, inasmuch as it would be more advantageous for him to become the owner. There are many other circumstances, too, which may affect the answer to the question what the owner of premises would have been willing to give, if, instead of becoming the owner, he had become the tenant of them. In all cases of the description of which I am speaking, the whole of the circumstances and the conditions under which the owner had become the occupier must be taken into consideration, and no higher rent must be fixed as the basis of assessment than that which it is believed the owner would really be willing to pay for the occupation of the premises.' (App. Cas., 1893, p. 593.)

"Language more clear and emphatic it is difficult to conceive, and I will not add any feeble argument of my own; for, if the authority of Lord Herschell does not carry conviction home to the Members of this Council, nothing else will.

"To summarise, it seems abundantly clear to me, Sir, that the whole system is based upon an assumption which has no foundation in fact and which has no justification in principle. If it was permissible to analyse the reason which lies at the root of the matter, but which is never publicly avowed, it seems to be this: when a wealthy man has built a mansion, he has given manifest proof of his wealth; he has the means to pay and let us tax him. I wish, Sir, this were the principle, uniformly applied to all—to the poor and to the rich alike. If the taxes were regulated according to the means of the

individual rate-payer, I am sure we should touch the pockets of many who now manage to escape with the payment of comparatively insignificant amounts."

The Hon'ble MR. BAKER said:—"The amendments which have been moved by the two Hon'ble Members relate to two separate matters. The first of them relates to the adoption of the principle of valuing residential houses according to some percentage on the cost of construction. The other matter relates to the particular percentage at which the assessment should be made. I will deal with these two matters separately.

"In the first place, I wish to observe that this matter has been fully discussed on three separate occasions. It was discussed at great length in Council in 1888 when this principle was first introduced by Sir Henry Harrison, and the Council then decided to accept it. It was again considered in 1890, when a petition was submitted by a number of influential house-owners protesting against the principle of the Act of 1888. That petition was sent to Sir Henry Harrison for report, and he recorded a very lengthy and most able minute dealing with the whole question—a minute which was characterised by the Government as an able, elaborate and conclusive vindication of the provisions of the existing law. The conclusions of the Local Government on the matter were formulated in a Resolution, dated the 7th June, 1890, in which the whole question was again reviewed; and the decision arrived at was that although residential houses were still somewhat under-assessed, yet the result of the recent legislation was nevertheless a decisive approach to fairness and equal taxation. That is not all. Later on in the same year, a further memorial was submitted to the Viceroy, and was forwarded to the Local Government for report. The views of this Government on the further memorial were expressed in a letter to the Government of India, dated the 15th October, 1890, in which it was maintained that the mode of valuation prescribed in 1888 was undoubtedly much better and fairer in its results than the habitual under-valuations under the old law of the class of houses concerned. The Government of India endorsed the opinion expressed in Sir Henry Harrison's minute and in the Resolution and letter of the Government of Bengal, and considered that they disposed of the arguments of the memorialists on all points, and they declined to interfere.

"It is rather to be regretted, under these circumstances, that this question should be brought up again. I have read the various representations made by the Corporation and by the British Indian and other Associations, and I have listened to the arguments which the two Hon'ble Members who have moved amendments have adduced, and I must say that I find nothing new in them; nothing but the old arguments put forward in 1888, which were then proved to be fallacious and unsound. I do not propose to take up the time of the Council by reading the proceedings of this Council in 1888 when this principle of valuation was first adopted; but if, after hearing what I have to say on the subject, any Member still feels any doubt, I would ask him to read the Resolution and letter of the Government of Bengal which deals with the subject in a manner which is quite convincing.

"First, I should explain, for the information of the Council, a matter which all Hon'ble Members may, perhaps, not quite understand—what meanings are put on the terms 'residential' and 'tenanted' houses. What is meant by a tenanted house is a house built for letting purposes and ordinarily let. By residential house is meant a house built by any one, not for the purpose of letting or selling it, but for the purpose of living in it himself with his family. The number of residential houses in Calcutta used in that sense is 11,945 as compared with 20,562 rented houses. The proportion of residential houses is about 40 per cent. of the whole number of houses in Calcutta, and that is a proportion which is not approached in any town in England. The annual valuation of these 11,900 residential houses at the present rate is Rs. 45 lakhs and the annual valuation of the 20,562 rented houses is, I think, 104 lakhs.

"The English law of rating on which the Indian law is based is to be found in the Statute, 6 & 7 Wm. IV, cap. 96, an Act passed in 1836. It lays down

the principle that the annual value of a hereditament shall be the rent at which the same may be reasonably expected to let from year to year free of all tithe, commutation charges, insurance, repairs, and the like. Under the Calcutta law of 1876 and also the law of 1888, the annual value of houses is based on that principle. The law of 1876 laid down that the estimated gross annual rent at which any house or land may be expected to let from year to year, less in the case of a building an allowance of ten per cent. for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent, shall be the annual value. In the Act of 1888 the same words were used in respect of the annual value of houses erected for letting purposes or ordinarily let. In respect of residential houses, however, a different rule was laid down. The reason for introducing a different rule in that case was this. In the case of rented or tenanted houses the rent, which is based on open competition, is a very fair criterion of the relative annual value as between one house and another. But in the case of residential houses it is not so. In the case of residential houses which are not let, there is no actual rent, and the annual value must be determined in some other way. I will explain what was the method adopted in ascertaining the valuation of such houses before the passing of the law of 1888. The matter was in the hands of Assessment Benches selected from among the Commissioners themselves by lot, and I may mention that there were good reasons for selecting them by lot. As these houses were not actually let, there was no actual rent, and the Assessment Benches had to ascertain the annual value in some other way. What they did was this. It occasionally happened that a residential house passed out of the hands of the owner and was let. They used to take a house of this kind; they used to ascertain what rent was actually paid for a house of that description, and they used to take that rent as a standard of the annual value of similar residential houses, having due regard to locality and accommodation. Now, a valuation obtained in that way is entirely unsuitable and inadequate. There exists in Calcutta amongst Hindus the strongest possible prejudice against living with one's family in a hired house. It was stated by Dr. Gurudas Banerjee in the discussions of 1888 that there is a general feeling that a man ought to possess a place of his own to live in with his family. It was stated by Babu Nilmony Mitter that so strong is this prejudice that a person would rather live in tiled huts on two or three cottabs of land of his own, than in a comfortable hired pucca house. It was stated today by the Hon'ble Babu Surendranath Banerjee that a Hindu builds a house in accordance with an instinct instilled into his nature; he builds it in order to leave it to his family as a monument of his affection for his children. Now, Sir, it is a consequence of this feeling and prejudice in Calcutta that there is no demand for residential houses for the purpose of letting; no one wishes to hire one; no one wishes to let one; there is no effective demand for that class of houses. Ordinarily such houses never come into the market at all either for sale or for hire, and it is only by accident that they are let for hire at all; and, when a man is compelled by untoward circumstances to let his house, he has great difficulty in finding a tenant, and, if he finds one, he is compelled to accept what the tenant chooses to give. The case is entirely different from the case of houses which are let in the ordinary way. Now the Assessment Benches took this depreciated rental as the standard for fixing the annual value of residential houses which are never let. In this way, they set up an entirely false standard of valuation, and the consequence was that residential houses in the occupation of owners were habitually and systematically under-assessed. Sir Henry Harrison estimated the under-assessment to be from 30 to 50 per cent. Mr. Allen, the then Legal Remembrancer, estimated the percentage on the actual cost of constructing such houses to be frequently as low as 2 per cent. In the case of Nundo Lal Bose, which is probably the case to which the Hon'ble Babu Surendranath Banerjee referred just now, it was admitted that the valuation on the cost of construction of the house, a new and costly house, situated in a good part of the town, amounted to only 2½ per cent. upon the actual cost, and even that insignificant percentage of the cost was appealed against by the owner. Babu Nilmony Mitter, an experienced engineer, stated that the prejudice against living in a hired residential house, and even against hiring one which had not

been built for one's occupation, was so strong, that even if a new house was sold immediately after it was completed, it would possibly not fetch what it cost the owner to build it. This, as Sir Henry Harrison characterised it, was a grave scandal. It was a scandal that a class of houses owned by many of the wealthiest members of Calcutta society and by a very large number of middle-class people, and by hardly any of the poorer classes, should be habitually under-assessed. To remove this scandal Sir Henry Harrison took the following course. He proposed to follow the principles of the English law as laid down by the Courts in England. It is true that in England there is not the same distinction between rented and residential houses. There is no prejudice there against living in a hired house, and houses occupied by the owners are hardly to be distinguished from those occupied by ordinary tenants. But there is a class of buildings in England with regard to which the same difficulty has occurred as has been experienced here—I mean manufactories, warehouses, hospitals, lighthouses, and the like. These are buildings which are not built for the purpose of letting, and which are usually occupied by their owners and are not let. The principles which the English Courts have applied to ascertain the annual value of such buildings are these. They are laid down in a well-known case, and this is what the Judge said in that case:—

‘A hypothetical tenant must be assumed[1].’

“That is to say, the principle simply is this: In order to ascertain the rent which a hypothetical tenant might be reasonably expected to pay, you must first take the annual value of the land; then you must ascertain what would be paid to a contractor for labour and materials for constructing the building, and the contractor's profit; then you must allow a certain percentage for deterioration, so as to get the value of the building in its present state; and on that sum you must take a reasonable percentage, and that will be the annual value. That is exactly what has been done in this Bill. Section 148A (*now 151*), clause (b), lays down the principle that the annual value of any building not erected for letting purposes and not ordinarily let shall be deemed to be 5 per cent. on the sum obtained by adding the estimated present cost of erecting the building, less a reasonable sum to be deducted on account of depreciation, if any, to the estimated value of the land valued with the building as part of the same premises. That is exactly the principle laid down in this very class of cases by the decisions of the highest Courts in England, and all that Sir Henry Harrison did was to give effect to that principle in the valuation of residential houses in Calcutta. The Hon'ble Dr. Asutosh Mukhopadhyaya said that it would be perfectly possible in the case of residential houses to apply the principle laid down for rented houses. He is perfectly correct, and I have all along felt that it was so; but under the law, as it stood in Calcutta prior to 1888, that was not done. Had it been done, the law would possibly not have been altered at all. But the Assessment Benches misinterpreted and misapplied the law; and it was for this reason that a remedy had to be found. The Hon'ble Babu Surendranath Banerjee has quoted from a report of the Calcutta Corporation to show that the system of valuation of residential houses adopted in 1888 had given rise to difficulties. That report was the report on the administration of the Municipality in 1888-89, the first report which was written after the change in the law was made. Since that year no comment has been made, as far as I know, in any other report.

“Now I will turn to the question of percentage, and on this point both the Hon'ble Members have relied on Mill, and one of them proposed that the percentage should be $3\frac{1}{2}$ per cent., whereas the other proposed that it should be fixed at the highest rate of interest on Government securities at the time. Practically both come to the same thing. The only reason I can see for making such a proposal is the opinion expressed by Mill; but in the particular passage from Mill which has been quoted it will be seen that the particular percentage to be taken has nothing to do with his argument. It is absolutely in the nature of an *obiter dictum*. The principle for which he was contending was that buildings of the class in question should be valued with reference to the cost of construction, and that principle he justifies by entirely independent arguments. The particular rate of percentage has nothing to do with his argument, and he gives no reason for adopting that particular rate. It is not adopted in England, and

[1] See *Lanley's Law of Provincial Governments*, 7th Ed., p. 19.

was not recommended by Mr. Goschen's Committee. The truth is that the rate of interest on Government securities has nothing to do with the matter. The true principle is that capital invested in house property always in the long run expects to receive the same return, whether it be invested in rented houses or in residential houses; and if, for any reason, it does not get that return, it will not be invested at all. If you get a certain return by investing capital in houses built for letting purposes, we may safely assume that the capitalist who invests his money in the construction of a residential house expects the same return for his money. In other words, if we can ascertain the return on capital invested in rented houses, that return represents the percentage on cost of construction which should be taken for the purpose of determining the annual value of residential houses.

"In 1888 it was at first proposed to take a percentage of 6 per cent. It was found then that capital sunk in house property in Calcutta fetched from 6 to 7 per cent. The Council finally adopted a lower rate, partly to be on the safe side, and partly in order to mitigate the effect of the enhancement which it was known and intended would follow on the introduction of the new system. I have endeavoured to ascertain what is the present return upon house property in Calcutta, and I will read to the Council letters which I have received from Messrs. Mackintosh, Burn and Company and Messrs. Mackenzie, Lyall and Company, whom I have consulted.

"Messrs. Mackintosh, Burn and Company write as follows:—

"A considerable amount of house property in the European quarters of the town has within the last few years, changed hands at prices based on a return of from 5 to 5½ per cent. interest, but we consider that purchasers at these rates have always in view the gradual increase in value of town property, and are satisfied with a return of 5 to 5½ per cent. for a few years if they see a fair prospect of increasing rents in the near future. We should say the present return expected from—

Tenanted or bustee land was	4½ to 5 per cent.
Residential property	...	5½ to 6 per cent.
Commercial or business premises	...	6 to 7 per cent.

"And Messrs. Mackenzie, Lyall and Company say:—

"The usual return on house property in Calcutta at the present time is 5 per cent., as an average all round, though we believe in some parts of the native quarter 6 per cent. is obtainable.

"The rate in 1888 was 6 per cent., and no one looked for less, but 5 per cent. may now be counted upon as the correct return."

"We may, therefore, take it that in the opinion of two European firms of the highest standing, who have great experience in this class of work, a percentage of 5 per cent. is not excessive now. I will only add that, if the percentage were reduced from 5 per cent. to 3½ per cent, assuming that the municipal taxes are levied at 20 per cent. on the annual valuation, the resulting loss to the municipal revenues would be no less than Rs. 3,70,000 per annum. If anything had been said as to 5 per cent. being an exorbitant rate, I should have drawn attention to the saving clause in the proviso (iv) in the same section; and I have a list of cases showing the manner in which that saving clause has been worked in the past to prevent any injustice or hardship. But neither of the Hon'ble Members who have moved amendments on this section have referred to that point, and, therefore, I shall not trouble the Council with any remarks on it.

"The Hon'ble Babu Surendranath Banerjee quoted a passage from a note by Sir Henry Harrison, in which it was said that if, after the valuation of the whole town was completed, it should be found that there were still complaints that this valuation was excessive, then it would be right to appoint a Committee of Engineers and Surveyors to test the valuations. That proposal was endorsed by the Government of Sir Stuart Bayley; and, although I have not had an opportunity of taking Your Honour's orders on the subject, I will take the responsibility of saying that even now, if complaints are received that the assessment of residential houses is too high as compared with that of rented houses, Your Honour's Government will be prepared to institute

such an enquiry. But I must clearly explain that, if it should turn out that the measures adopted in 1888 are insufficient, and that there is still undervaluation and under-assessment in respect of residential houses, it will be the duty of the Government to give effect to the recommendations of the Committee, even if those recommendations are in the opposite direction to what the Hon'ble Babu Surendranath Banerjee anticipates.

"There is one other matter included in the amendments of the Hon'ble Babu Surendranath Banerjee, although he did not say a word about it in his speech, namely, that the words 'and less ten per cent. for the cost of repairs' be inserted after the word 'any' in line 8 of clause (b) of section 148A (*now* 151). Possibly the Hon'ble Member has ascertained that this amendment is based on a misapprehension. I assure the Hon'ble Member that it is so, for he is comparing gross rental with net rent. In the case of rented houses, you deduct 10 per cent. from the gross rental in order to arrive at the net rent. This deduction corresponds to the deduction which is made in England of tithe, commutation charges, insurance, repairs, &c. But in the case of residential houses, when we take a certain percentage on the cost of construction we arrive not at the gross rental, but at the net rent, and there is, therefore, no necessity for making any deduction. To make a reduction of 10 per cent. as proposed by the Hon'ble Member would cost the Corporation not less than Rs. 45,000. Moreover, if the percentage were reduced from 5 to $3\frac{1}{2}$ per cent., the annual valuation would be reduced by 30 per cent.; and, if we take it that the consolidated rate is payable at 20 per cent., the loss would be no less than Rs. 2,70,000.

"I have nothing further to add except that the principle embodied in the Act of 1888 has stood the test of experience. It has been most carefully worked out and considered on three separate occasions, and I am firmly convinced that the Council will be making the greatest possible mistake if they make any alteration in it now."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I have a few observations to make in reference to this section of the Bill. The question is whether there is any necessity for a distinction between the two classes of buildings for the purpose of ascertaining the annual value. It has been observed by the Hon'ble Member in charge of the Bill that this question was thoroughly discussed in 1888 when the principle was adopted. If, however, the working of the Act of 1888 shows that there is a necessity for a change in the method of valuation of one of the two classes of cases, I think that change ought to be introduced. Because this question was discussed upwards of ten years ago and certain principles were adopted, that is no reason why we should adhere to those principles. Modifications of the law are made every day. With regard to one class of houses the existence of a very strong and peculiar feeling among the Hindus has been mentioned, and no doubt Hindus have a peculiar attachment for their dwelling-houses. They don't like the idea of not having a house of their own, but I don't see why that idea should prevent the application of the ordinary method of valuation of those houses. A hypothetical tenant may be found in order to assess a house at its letting value, its letting capacity, and then it would be let for a certain sum which would represent the annual value. If certain persons will not let their houses to any one but themselves, the question is what should be the actual amount payable for their occupation of the house. The Hon'ble Member in charge mentioned that there are about 12,000 such houses in Calcutta. Among these there may be certain palatial residences which cannot be let, which would not find suitable tenants; but the rest of the houses, a very large class, can very easily be let, and therefore their letting capacity can very easily be ascertained. I will mention one fact which will show the obvious injustice being done to the owners of this class of houses. It must be admitted that the value of houses varies according to the localities in which they are situated, and it must be admitted on principle that the value of a building depreciates or appreciates according to the value of the site upon which it stands. A building standing on 5 cottahs of land in the added area and a building on 5 cottahs of land in Harrison Road have very different values. The value of the site in one case may be at the rate of Rs. 200 a cottah; in the

other, it might possibly be Rs. 10,000 a cottah. I am told that in one instance a site was valued at Rs. 60,000 a cottah. The value of a building appreciates according to the value of the site on which it stands. A building in Burra Bazar standing on 5 cottahs of land constructed at a cost of Rs. 25,000 will probably be sold for Rs. 50,000, and may bring in a return of from 6 to 9 per cent.; whereas, with regard to a building on the other side of the town constructed at a similar cost, the value would be much less than Rs. 50,000 and the return would be 2 or 3 per cent. A uniform rate of valuation will, I submit, bring about great injustice. If this clause (b) of section 148A (*now* 151) is at all to be retained, and the amendment which has been proposed is rejected, I venture to submit that, to do justice to the owners of houses and grounds, there ought to be a sliding scale. Both the Hon'ble Babu Surendranath Banerjee and the Hon'ble Member in charge of the Bill have referred to the loss which will result to the municipality if the present principle of valuation of residential houses is reversed. I myself do not think there will be any loss, and I also venture to submit that there will be no practical difficulty in the valuation of these houses in the same way as in the case of rented houses. The value of the land according to its situation can be easily ascertained, and there will be no practical difficulty in determining the value of the building as well. The Hon'ble Member in charge of the Bill fortified himself with two letters giving the opinion of two respectable firms of considerable reputation that the return derived from house property in Calcutta varied from 5 to 6 per cent. upon the capital invested. That may be very true, but all the Members of the Council may not be prepared to accept that as the correct valuation. It may be true with regard to buildings within their own particular knowledge, but it may not be true with regard to other buildings."

The Hon'ble BABU JATRA MOHAN SEN said :—"I wish to add one observations. It cannot be denied that the owners of residential houses live in what is known as the native quarter of the town, and that larger amounts are spent in the construction of residential houses than on houses built for letting purposes, and a very fair income is derived from the capital sunk on houses of the latter class. It may be very injudicious to spend greater sums upon houses built for residential purposes in quarters of the town where you cannot get a proper return, but the fact remains that a proper return on the capital invested cannot be got in such cases; and, that being so, I submit that the return cannot be so high as 5 per cent. as the the Hon'ble Member in charge of the Bill maintains. If clause (b) of section 148A (*now* 151) is allowed to remain, I think the amendment proposed by the Hon'ble Dr. Asutosh Mukhopadhyaya that the return should be calculated at the rate of interest prevailing in respect of Government securities, should be accepted, and that instead of 5 per cent. it ought to be 3½ per cent."

The Hon'ble Mr. BUCKLEY said :—"There is one practical point which bear strongly on this question. The Hon'ble Babu Surendranath Banerjee observed that this clause (b) of section 148A (*now* 151), which stands in the Act of 1888 as well as in the Bill, operates as a grievous burden upon the middle class of house-occupiers, and he admits that the result of what he proposes will be a considerable reduction in the municipal revenues. For my part, I must say I do not understand how this is brought about. It seems to me that the result will be just the reverse; and, if the retention of clause (b) serves to give uniformity of valuation, the result of its omission will be that the owners of residential houses will have higher assessments made against them now than takes place under this provision of the law. The matter entirely turns on the cost of repairs. Rent is mainly made up of two things; first, the interest on the capital expended in constructing the building; and, secondly, the cost of keeping it in repair. Clause (a) of section 148A (*now* 151) seems to assume that 10 per cent. on the assessment will always cover the cost of repairs; but that is by no means the case according to my experience. The Government have houses valued at about ten lakhs of rupees, which are let mainly to Government officers; and, as a matter of fact, the cost of repairs of these houses varies considerably, in some years the cost amounting to 3½ per cent. and in some years 4½ per cent. on the capital cost of the buildings. That figure includes the repair of a number of hospitals and other

large buildings, and is, therefore, too high for the repair of the average house property in Calcutta. The cost of repairs of private houses in Calcutta should not be more than 2 or $2\frac{1}{2}$ per cent. on the capital cost of the buildings. Take the case of a man who owns a house which he lets; he spends Rs. 2,000 in purchasing the land and Rs. 10,000 in building the house; according to the Hon'ble Member in charge of the Bill, he expects to get a return of 5 per cent. on his capital; so that, as regards the house alone, excluding the land, he has to receive a net return of Rs. 500. The repairs of the house will cost him Rs. 200 a year; he must let it, therefore, for Rs. 700; and the assessment, after the 10 per cent. allowed by the law is made, will be Rs. 630. Now, apply the same calculation to a residential house under clause (b): the house is built at the same cost of Rs. 10,000: the assessment will be 5 per cent. on that sum, or Rs. 500 only; so the occupier of the residential house will pay less rates to the Municipality than the occupier of the other house which is let by the owner. The long and short of all this is that a 10 per cent. allowance on the assessment for repairs is really too low, and a man who occupies his own house gets a very considerable advantage from that fact if interest, in both cases, is taken at the same figure. If the assessment on residential houses is really honestly made on the same principle as in the case of other houses, the effect will be very much against the argument of the Hon'ble Babu Surendranath Banerjee."

The Hon'ble MR. OLDHAM said:—"A point which has not been answered is that which was suddenly suggested by the Hon'ble Babu Boikanta Nath Sen, that for a 5 per cent. rate of assessment should be substituted a sliding scale. That proposal has not been made the subject of any amendment. But it is obvious that a 5 per cent. rate is an average rate. On reading the discussions which took place on Sir Henry Harrison's proposals on this subject, with reference to the value of dwellings in different parts of Calcutta, I find that his general finding on the whole subject was that though the value of land is different in different parts of the town, and there is a tendency to over-value the land, there is the same invariable under-valuing of residences everywhere, so that the results, so far as residential houses are concerned, come out the same. I don't know whether the Hon'ble Babu Surendranath Banerjee has really considered the state of things he referred to in his speech. If that state of things is considered, it will be found to give the complete answer to what he complains of. He never attempted to explain what the reason for it was, but at the same time he admitted that it is an object with every Hindu to acquire an ancestral house which he could leave to his descendants; and, as a very large proportion of the city is Hindu, the consequence is that residential houses constructed with this object form a proportion of about 40 per cent. of the whole number of dwelling-houses in Calcutta. Such a state of things, as far as we know, does not exist in any other part of the world, and the Hon'ble Member in charge of the Bill has fully discussed and given his reasons why the letting value of such houses cannot possibly be ascertained. Similarly, in this state of things, it is impossible to ascertain the true *market* value of these houses, because people only wish to buy them for the purpose of demolishing the houses and building new houses in their stead, and not of living in these houses. In considering what the *market* value of such houses is, we must remember that, when a residential house is built, there is no intention of its being either let or sold; but circumstances alter, and, if in any case there is a forced sale, it is bought by some other person only to demolish it and build another house instead. The land retains its value, but it is impossible to give the house its proper *market* value as a residence when it is only bought for the purpose of demolishing it."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"We feel a considerable strain put upon us to carry on this discussion of a most important kind relating to a crucial point at this late hour of the day, and, if we are obliged to do so, I trust I may be permitted to say that we carry on the discussion under a protest. The matter ought not to be rushed through the final stage of a sitting of the Council which has already lasted from 11 A.M. to 5 P.M. My hon'ble friend the Member in charge of the Bill has made the remark that we have been repeating the arguments which have been raised in this Council in 1888, and

which have since been raised at public meetings in the Town Hall and elsewhere. I plead guilty to that charge; the subject is an old one; the arguments are hackneyed; we cannot possibly invent arguments which have no relation to a matter which has been so thoroughly threshed out. But the old arguments derive additional force when they are illustrated by facts which cannot be controverted. I listened with the utmost interest to the statement which was made on the part of the Government, but not a word did I hear in opposition to the statement I read out, and which showed that, with regard to the assessment of this particular class of houses in a particular locality, there have been increases to the tune of 200 per cent. Discreetly silent was the Hon'ble Member in charge of the Bill with regard to those assessments."

The Hon'ble Mr. BAKER said:—"The total increase is about 22 per cent. in the area referred to."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Concrete cases relating to particular wards are more telling than a statement of the kind just made by the Hon'ble Member in charge of the Bill. My facts can easily be tested, and the statement which I have read out discloses the fact that in that particular locality the assessments have increased in some cases by 200 per cent. Does the Hon'ble Member dispute the position? I challenge him to do so."

The Hon'ble Mr. BAKER:—"I do, certainly."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am amazed at the statement just made by the Hon'ble Member. A person who is paying Rs. 20 is called upon to pay Rs. 40; that is surely a grievance in the case of a middle class man. My hon'ble friend's reply is that Sir Henry Harrison went into the figures, and found that the increase on the whole amounted to 22 per cent. Is that a reply to the facts which I have adduced? The truth is that there have been in many cases enhancements to the tune of 100 and 200 per cent., and probably more. There have been, in some cases at any rate, grievous hardships endured. I welcome the statement which has been made by the Hon'ble Member that the Government is prepared to carry out the promise made by Sir Stuart Bayley's Government, and that an enquiry will be made, because I feel confident of the strength of my cause. So heavy a burden has been imposed that I feel convinced that a Commission, consisting of thoroughly impartial men, will be forced to the conclusion that the principle of valuation introduced in 1888 for the assessment of residential houses has been attended in its practical operation with grave hardship; and I am prepared to accept the proposal subject to the condition which the Hon'ble Member wants to impose. I do not wish to suggest the smallest reflection upon any one in stating the facts that have come to my knowledge. The Hon'ble Member said that the Assessment Benches abused the powers under the law, and therefore the law of 1876 was changed and the present law was enacted. That was certainly one of the grounds alleged by Sir Henry Harrison for the introduction of the law of 1888. If that is the whole of the explanation, then I am entitled to claim at the hands of the Council a reversal of the judgment which the Council arrived at in regard to this particular matter in 1888. The appellate benches no longer exist. The power of hearing appeals from assessments has been transferred to the Small Cause Court, a perfectly independent tribunal; and, therefore, much of that which led to a modification of the law of 1876 has been removed, and I have therefore a right to claim that the law be restored to its old footing.

"The Hon'ble Member has observed further that the percentage found by John Stuart Mill as the proper percentage of valuation was a mere *obiter dictum*, and that no weight ought to be attached to it. For my part I must say that I attach the greatest possible weight to anything which bears the authority of John Stuart Mill. I am sure he would write nothing under an impulse; he was the greatest thinker of the age, and weighed every

word that he wrote. Therefore, I am not prepared to accept what the Hon'ble Member has said, namely, that the particular part of Mill's opinion which limits the percentage to be taken in such cases should be brushed aside as unworthy of consideration. If we set it aside as an *obiter dictum*, why not discard the whole principle as an *obiter dictum*? What is there to distinguish one part of what Mill says from the other? The truth is that Mill's statement ought to be taken in its entirety. We should not be justified in taking one part of the statement, leaving out the other. Why should not the valuation of a building be taken at $3\frac{1}{2}$ per cent. upon the estimated cost? I admit that it would involve loss to the Corporation, and I am unwilling that the Corporation should suffer in revenue; but the claims of justice are paramount. If in consequence of a change in the law one particular section of the community suffers a grievous burden, then it is the undoubted duty of this Council to take measures to remedy this grievance. The interests of the Corporation ought certainly to be safeguarded; but, if we feel that the state of the law involves something like injustice on a particular section of the community, it is incumbent upon us to remove it.

"I have not been able to follow the observations which fell from the Hon'ble Mr. Buckley, and my hon'ble friend Dr. Asutosh Mukhopadhyaya is very much in the same position as myself. The Hon'ble Mr. Buckley seemed to think that, if our figures are correct, they will operate against the interest of the very class in whose behalf we are pleading. We are the best judges of our own wants, and, if the acceptance of our amendments will prejudice the cause of the middle-class Hindu owners, we are prepared to accept the consequences, whatever they may be. But I am afraid the Hon'ble Member is labouring under a misapprehension. The annual value is taken at 5 per cent. on the sum obtained by adding the estimated present cost of the building to the cost of the land, less a reasonable sum for depreciation. I contend that the cost of repairs should also be deducted.

"In conclusion, I wish it to be distinctly understood that in any observations which I have found myself compelled to make, I have not intended to say anything which implies a personal reflection upon the Hon'ble Member in charge of the Bill. I should be sorry if anything which I have said should be interpreted in that light at all. It is my duty to defend my case. I may do so sometimes with some degree of warmth, but I am certain that Hon'ble Members of this Council will sympathise with a colleague who urges with warmth a case which he believes to be based on substantial justice."

The Hon'ble MR. BAKER explained that by the term "Commission of Enquiry" he did not mean an enquiry into the whole principle of assessment, but an enquiry to test whether the assessments made under the Act of 1888 were excessive or the reverse.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I have no desire at this late hour to detain the Council with a lengthy reply, but I cannot agree with the Hon'ble Member in charge of the Bill that it is unnecessary to re-open the question. He expressed his regret in very unmistakeable terms that this question should have been re-opened at all. I am unable to share in that regret, because I am strongly convinced that the system is wrong from beginning to end. In the course of his able defence of the provisions of this Bill, the Hon'ble Member made an admission which, I submit, completely destroys his own case; and if he were arguing before a judicial assembly, he would have completely lost it in no time. With reference to my argument of a hypothetical tenant, he said that that was also his line of defence, and that there was no difficulty in applying that principle to the case of a princely mansion in the same manner as to the case of a house which is built for letting purposes in the ordinary way; and, in the plenitude of his argument, he went on to add that if the assessment benches in this city had not misunderstood and misapplied the law as it was understood and applied in England, there would have been no necessity for enacting the law of 1888. If that is so, I submit I am entitled

to a reversal of the law of 1888. The law in England has now been finally set at rest by the authoritative decision of the House of Lords. If so, what is the use of importing into our law a principle which does not find a place in the law of England, which is not recognized elsewhere in India, and which is a unique feature of our Municipal Act?

"Then it was said, I think by the Hon'ble Mr. Buckley, that you cannot take the measure of the rental to be paid by a hypothetical tenant as the basis of valuation in respect of buildings not fit for purposes of tenancy, not built with the intention of being let and not ordinarily let, because you cannot ascertain what would be the rental payable by a hypothetical tenant. Be it so. Let us concede that the principle of a hypothetical tenant is based on a fiction. But let us not forget that in trying to avoid one fiction you take shelter under another, namely, the fiction on which the principle of the Bill is based, that, when a man invests capital in building a house as his own residence, he expects that he will derive at least as much profit and enjoyment as will be equivalent in money to a certain rate of interest on the capital sunk. Has this statement any foundation in fact? A man builds a house and lavishly decorates it. Does he think he will actually get from it benefits which will be equivalent to the interest upon the sum he expends? Take, for instance, a hospital built by the Government: they spend five lakhs in building it. Do the Government calculate that the benefit to be derived from that building will be equivalent to the interest derived from a similar sum invested in Government securities? Further, I ask, again, where do you get the arbitrary rate of five per cent.? Why do you pile fiction upon fiction? I repeat with great confidence that the whole principle of this provision of the Bill is based on fictions which have no foundation whatever in fact."

The Hon'ble BABU SURENDRANATH BANERJEE's motion that for clauses (a) and (b) of section 148A (*now* 151), the following be substituted, namely—

"The estimated gross annual rent at which any building (including a hut or shed) or land liable to the consolidated rate under this Act might reasonably be expected to let from year to year shall be deemed to be the annual value of such building or land."

and that the words "under clause (a)" in proviso (ii) to section 148A (*now* 151), and the whole of provisos (i), (iii) and (iv) to the same section, be omitted, being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi
Delawar Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendments were lost.

The Hon'ble BABU SURENDRANATH BANERJEE's motion that the words "three-and-a-half" be substituted for the word "five" in line 4 of clause (b) of section 148A (*now* 151), and that the words "and less ten per cent. for the cost of repairs" be inserted after the word "any" in line 8 of clause (b) of section 148A (*now* 151), was then put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA's motion that in section 148A (*now* 151), clause (a), the words "erected for letting purposes or ordinarily let" be omitted, being put, the Council divided as follows:—

Ayes 6

The Hon'ble Raja Bahadur Itanajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Dola-
war Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA's motion that clause (b) of section 148A (*now* 151), be omitted, was then put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA's motion that in section 148A (*now* 151), clause (b), for the words "deemed to be five *per cent.*," the words "the amount derivable as interest, calculated according to the highest rate of interest payable on Government securities," be substituted, was also put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA's motion that in section 148A (*now* 151), proviso (iii), for "of five *per cent.*" be substituted "according to the rate stated in clause (b)," was also put and lost.

The Council was then adjourned to Tuesday, the 19th September, 1899.

CALCUTTA ;

The 16th January, 1900.

F. G. WIGLEY,

Assistant Secretary to the Govt. of Bengal,
Legislative Dept.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Tuesday, the 19th September, 1899.

Present:

The Hon'ble SIR JOHN WOODBURN, K.C.S.I., Lieutenant-Governor of Bengal
presiding.

The Hon'ble MR. W. B. OLDHAM, C.I.E.

The Hon'ble MR. R. B. BUCKLEY.

The Hon'ble MR. C. W. BOLTON, C.S.I.

The Hon'ble MR. E. N. BAKER.

The Hon'ble RAI DURGA GATI BANERJEA, BAHADUR, C.I.E.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. F. F. HANDLEY.

The Hon'ble MR. F. A. SLACK.

The Hon'ble KHAN BAHADUR MAULVI DELAWAR HOSAIN AHMED.

The Hon'ble BABU JATRA MOHAN SEN.

The Hon'ble MR. T. W. SPINK.

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR.

The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH, C.I.E.

The Hon'ble MR. D. F. MACKENZIE.

The Hon'ble MR. J. G. APCAR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.H.S.E.

The Hon'ble BABU BOIKANTA NATH SEN.

The Hon'ble BABU SURENDRANATH BANERJEE.

THE CIVIL COURTS AMINS BILL.

The Hon'ble MR. BOLTON said:—"It was decided in Council on the 16th September, 1899, that the Bill to repeal the Civil Courts Amins Act in Bengal should be taken into consideration to-day. I am not aware whether any Hon'ble Member wishes to offer any remarks upon the Bill."

The Hon'ble RAJA RANAJIT SINHA, BAHADUR, OF NASHIPUR, said:—"I beg to support this motion. I am sure that this Bill when passed into law will be a very useful measure, and that it will remove a long-felt want of the public. On the occasion of the discussion of the Financial Statement in April last, I had the honour to draw the attention of the Government that in the matter of boundary disputes the Civil Court had generally to depend much on the reports of their amins, and so the parties to a suit have to suffer at the hands of the Civil Court amins, who do not generally bear a good reputation. I have now to thank the Hon'ble the Chief Secretary to Government for having taken up the matter in right earnest and so soon supplying what I believe will provide a satisfactory solution of the matter. The announcement that he made the other day that the services of the junior members of the Bar would generally be utilised for the purpose of making local investigations has given universal satisfaction to every section of the community. I have only one further suggestion to make in this respect, that if the pleaders who are employed for this purpose could give satisfaction both to the Courts and the public, then I think their claim to be appointed as Munsifs as vacancies occurred should be favourably considered; and in that case it would operate as an incentive to strict honesty and fairness towards both parties. The other day the Hon'ble Babu Boikanta Nath Sen, I am told, made similar suggestions in regard to this matter; and I understand he was told by the Hon'ble Member in charge of the Bill that pleaders whose names were enrolled for appointment as Munsifs would generally be employed for these purposes. But I presume there may be some difficulty in carrying out this intention in some cases; for it may happen that some of the pleaders whose names are so enrolled may not have a practical knowledge of surveying; and, secondly, I believe there is a rule to the effect that pleaders who fail to get an appointment as a Munsif within the age of thirty years are ineligible for such appointment; therefore, it is probable that such pleaders will not be able to gain sufficient experience in that short time, and names of many experienced men will be discarded from the list of registered candidates on the ground of over age."

The Hon'ble BABU JATRA MOHAN SEN said:—"I am also in favour of this Bill, and I think that, in order to give young pleaders facilities to acquire a practical knowledge of surveying to fit them to undertake these local investigations, they should be allowed to attend surveying classes in some college or other simultaneously with their attendance at law lectures. On the other points connected with this measure suggestions have been offered by other Hon'ble Members of the Council with which I agree."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I consider this to be a wise and safe measure; because, in the first place, having regard to the condition and general circumstances of the province and the improvement which has already taken place in the mofussil Bar, it is but fair that the amins employed under the Act of 1856 should be dispensed with and a non-official agency employed to do the work which Civil Court amins have hitherto done. This Bill does not prevent the services of amins being utilised by District Judges, and therefore I say it is a very useful measure. It will not introduce a revolutionary change; it will be gradually introduced, and District Judges will be perfectly at liberty to employ the agency of members of the Bar when they see fit, but at the same time the services of the present amins will be utilised and they will not be deprived of their bread. As regards the practical portion of the Act, if it be the object of the Government to give immediate effect to it, then rules will have to be framed under section 392, Civil Procedure Code; and I would suggest that the service of a pleader as a commissioner under the Act in a certain number of cases should be considered a condition

precedent to obtaining appointment as a Munsif. The Hon'ble Member in charge of the Bill suggested that members of the Bar already enrolled as candidates for Munsifships should get the commissions; but I think that practically that might give rise to some difficulty. Where registered candidates are available, i.e., in those districts in which there are registered candidates for Munsifships, preference should be given to them; but where such candidates are not available,—and I know several districts where there are no such candidates registered and practising,—in those districts other junior members of the Bar should not be excluded. The next question is whether prospective examinations should be insisted upon in surveying. I submit that, having regard to the rule now in force in the Calcutta University, that drawing will form one of the branches for the Entrance examination, although it is an optional subject, prospective rules should be framed providing for examination in survey as a qualification necessary to get the commissions. At first, however, to give practical effect to this Act, I think a joint certificate by the District Judge and the Subordinate Judge, expressing their opinion as to the qualification of a particular member of the Bar, ought to be considered sufficient. The members of the Bar who have the degree of Bachelor of Law have to pass examinations in pure and mixed mathematics, and it will be very easy for them to learn the practical work of surveying, and District and Subordinate Judges are quite competent to certify as to particular candidates having qualified themselves in the practical part of the work and being competent to carry out local investigations under commission. Certain observations have also been made by the Hon'ble Member in charge of the Bill as to the remuneration to be given for such commissions. I beg to submit that it is hardly necessary for the High Court to frame rules on this point, because, so far as I remember, section 397 of the Civil Procedure Code, if I mistake not, amply provides for the remuneration of such commissioners by the Civil Courts. Hard-and-fast rules sometimes produce dissatisfaction both to the commissioners and the suitors; commissioners sometimes consider themselves ill-paid; but, if the Civil Courts are allowed to exercise unfettered discretion, they will have regard to the amount and nature of the work and be able to fix the remuneration in a proper manner, either by way of payment of daily fees or in a lump sum. Therefore, I do not think the remuneration to be given to commissioners under this Act should be fixed by rules; but the Civil Courts should be left to fix the amount of remuneration to be paid as they are empowered to do under section 397 of the Civil Procedure Code. With these remarks, I give my entire support to this Bill."

The Hon'ble MR. HANDLEY said:—"As this is a subject in which I have taken great interest for many years past, and as a District Judge for the last ten years, I have reported in favour of some such Bill as this. I should have thought that for the present it is hardly necessary to discuss the rules which are to be framed under this Act; but, as some Hon'ble members have offered suggestions regarding the framing of the rules, I shall take the liberty of offering a few remarks upon the Bill. And first I say that the Hon'ble Members who have spoken have not noticed one branch of the subject. Not only have local investigations to be made in which a knowledge of surveying is necessary, but the local examination of accounts is often required, which is a very difficult branch of the work, and for which very few pleaders are qualified, for they have not had any training in accounts. Therefore, not only should pleaders who wish to have their names enrolled for employment under this new scheme have certificates of qualification in surveying from some recognised college, but they should also have certificates of knowledge of accounts. Some Hon'ble Members have suggested that preference should be given to those pleaders who have had their names enrolled as candidates for Munsifships. I don't think this to be a very practical suggestion, for I believe very few pleaders have managed to get their names enrolled in the High Court, and it is a very difficult thing to do so, whereas the number of pleaders for whom employment could be found under this Bill will be very large. In Alipore some 15 or 20 pleaders are employed besides amins; so very heavy is the work. If only two or three pleaders are enrolled as candidates, how could the work go on? And there are the subdivisions of Barasat and Diamond Harbour, where there are no enrolled candidates at all.

It is very rare indeed for a candidate to be enrolled from a Munsif's chauki. I would therefore by no means limit employment as Commissioners to pleaders who are enrolled as candidates for employment as Munsifs."

The Hon'ble Mr. BOLTON said :—" I desire to express the gratification of the Government at the approval with which the Bill has been received by the Hon'ble Members. On its introduction the Hon'ble Babu Boikanta Nath Sen offered suggestions which I promised would be fully taken into consideration, and I can only repeat that, when rules to give effect to the system introduced by the Act are framed, the suggestions which were made by the Hon'ble Member and have now been made by other Hon'ble Members will not be forgotten. With regard to the making of the rules, the High Court must be consulted, and no definite opinion can now be expressed as to the shape which those rules will take; but in dealing with the case the remarks which have been made in Council will be considered. There is one remark made by me when introducing the Bill to which some exception has been taken. I observed that it would be preferable that the commissioners appointed under section 392 of the Civil Procedure Code should be selected from the candidates whose names have been enrolled for appointment as Munsifs. The Hon'ble Babu Boikanta Nath Sen has pointed out, what subsequently occurred to myself, that this may not be practicable in some districts, because such candidates are not found in every district. The suggestion that success in carrying out these enquiries should give a claim to enrolment as candidates for Munsifships appeared to me open to the objection that preference might, in that case, be shown by some Courts to particular pleaders whom they wish to see enrolled. A rule to that effect should not, therefore, be introduced. If junior pleaders carry out these enquiries successfully, they will establish a special claim to enrolment as candidates for the Subordinate Judicial Service which the High Court will doubtless recognize."

The Hon'ble Mr. BOLTON then moved that the Bill be passed.

The motion was put and agreed to.

THE CALCUTTA MUNICIPAL BILL.

NEW SECTION.

The further consideration of the Hon'ble Mr. Baker's motion that the following section be inserted after section 133 (*now* 138),* namely:—

"133AA (*now* 139). The time for the repayment of any money borrowed under section 124 (*now* 129) or section 133 (*now* 138) for the purpose of discharging any previous loan shall not, except with the express sanction of the Government of India, extend beyond the unexpired portion of the period for which such previous loan was sanctioned,"

was resumed.

The Hon'ble Mr. BAKER said :—" I don't know that I can add very much to what I said yesterday on this subject. This section has been pressed for by the Government of India. I should be glad if we could dispense with it, but after all I think it will make little difference. The Corporation can never contract any loan without the previous sanction of the Government of India, and, even if this section were not enacted, the Government of India would have power to impose whatever restrictions they please. It will therefore be in their power to limit the currency of any loan raised under this section. All that this section provides is that without such sanction this particular provision shall be enforced in every case."

The Hon'ble BABU SURENDRANATH BANERJEE said :—" I have consulted some of my friends, and I have no objection to offer to this section."

The motion was put and agreed to.

* The sections of the Bill having, under the direction of the Council, been re-numbered, the present number of each section is inserted in brackets, wherever the new numbering differs from the old.

SECTION 151.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 148A (*now* 151), clause (a), line 5, after the word "building" the words "is actually let or" be added.

He said:—"I shall presently point out that this amendment is in perfect harmony with the principle which underlies the decision arrived at last evening upon four other amendments which I had the honour to move. My Hon'ble friends decided not to accept the principle of a hypothetical tenant in so far as buildings not erected for letting purposes and not ordinarily let are concerned. I now venture to suggest that in order to be consistent they ought to disregard the principle of a hypothetical tenant in so far as buildings erected for letting purposes or ordinarily let are concerned, when such buildings are actually in the occupation of a tenant. I can well anticipate that the Hon'ble Member in charge of the Bill will not be slow to point out that there is weighty authority against my proposition to be found in the English law. I am quite aware of that, and I would have been perfectly satisfied if the system which prevails in England had been introduced here in its entirety; but I do not appreciate the wisdom of adopting the principles of the English law when they suit the Hon'ble Member's purpose and ignoring them when they do not happen to suit his purpose. Section 148A (*now* 151) provides that the annual value of land and the annual value of any building erected for letting purposes or ordinarily let shall be deemed to be the gross annual rent at which the land or building might reasonably be expected to let from year to year. I lay stress on the phrases *reasonably be expected to let* and *from year to year*. These phrases show that there is no difference whether the building is vacant or in the actual occupation of a tenant. In both cases you value the building, not upon what the actual tenant pays, but what a hypothetical tenant might reasonably be expected to pay. A has a building which he lets for Rs. 10 a month; he lets it for three years; then comes the assessor and says: 'Although the actual rental is Rs. 10, I think it might reasonably be expected to let for Rs. 15 a month if let from year to year.' Now let us pause for a moment, and consider what elements of uncertainty you introduce here. There is no standard by which you can determine whether the valuation made by the assessor on this principle is reasonable or unreasonable, whether his expectation is just or unjust. Then, again, why do you take as your test the amount of rent which a prudent landlord might reasonably expect if the premises were let *from year to year*? Why do you introduce this extraordinary principle? What is the ground of this preference for a yearly tenancy? You make your assessment on the basis of an annual tenancy, but you make the assessment last for a period of six years. Let me illustrate this by a concrete case. A, a landlord, lets out a building to B for a period of three years upon a rental of Rs. 50 a month; if he had to let it out for a shorter period, say for one year, he would have demanded a higher rent, say Rs. 60 a month, but he feels secure for three years and naturally accepts a lower figure. Let us not forget at the same time that the tenant is reasonably entitled to this indulgence, inasmuch as he undertakes a liability for three years. Then comes your municipal assessor, and says that, apart from all questions of what is reasonable or what is unreasonable and what may or may not be expected, the annual value must be calculated on the basis of a yearly tenancy, and therefore proceeds on the basis of Rs. 60 a month. Now, look at section 150 (*now* 172), which provides as follows:—

'If the annual value of any building or land, as determined under this Chapter, exceeds in any case the amount of rent payable to the owner, the owner may in such case recover from the person who pays him rent the difference between the sum assessed upon him as the owner's share of the consolidated rate and the sum at which he would have been assessed had the building or land been valued only at the amount of rent actually payable to him, and such difference shall be added to the rent, and shall be recoverable by the owner from the person liable for the payment of the rent.'

"If you apply this to the concrete case of Rs. 50 as the rent of the building for three years and Rs. 60 as the rental for only one year, you assess the rate on Rs. 60, and the tenant is made liable not only for his half-share of the rate on the basis of Rs. 60, but is also liable to the owner for the whole rate calculated on the difference between the sum of Rs. 50 and Rs. 60, inasmuch

as Rs. 60 is the sum for which the building is reasonably expected to let from year to year. Although the building is let for Rs. 50, the tenant has to pay his own share of the rate on Rs. 60, and also the excess rate, to the owner. The burden, therefore, unfairly enough, falls wholly upon the unfortunate tenant; and although in consideration of the fact that he has undertaken a burden for a long term, has made the landlord secure in the enjoyment of the fruits of the property for such term, and has thus rightfully obtained the property upon a reduced rental, he has to pay the Municipality rates, as if he had taken a lease only for a year. Let us not again overlook the fact that this arrangement between the lessor and the lessee in the case of a tenancy for a long period is not without its benefit to the Corporation, *e.g.*, if A lets out his property to B only for a year, he may find himself at the end of the tenancy without a tenant at all, which is by no means an uncommon occurrence, and if the premises remain vacant for any period, the Corporation loses the occupier's share of the consolidated rate. Then, again, one of the considerations for the reduction of the rent might have been the payment of a handsome bonus to the landlord, but, although the landlord thus retains the advantage of the bonus, you hold the unfortunate tenant under section 150 liable for the whole of the rates calculated upon the difference between the actual and the hypothetical rents. Therefore, if we are to be consistent, if we disregard the principle of a hypothetical tenant in the case of a building not erected for letting purposes, and not ordinarily let, let us go further, and in the case in which a building or land is in the actual occupation of a tenant, let us take the rent paid by him as the basis of assessment. If a building or land has not been let out, you might take the valuation on the rental of a hypothetical tenant. In either case there ought not to be any room for speculation or discussion as to what is reasonable or unreasonable.

"It may, no doubt, be said that it is not always fair to take the actual rental as the test, because, from a variety of causes, the rent paid in coin may not represent *all* that the owner receives as value for his property, or it may even sometimes be in *excess* of the actual letting value, and include considerations which are not rateable. But it is undeniable that, in our desire to secure a common standard of value by reference to a hypothetical tenant, we introduce an unknown element which it is extremely difficult to determine in practice. To summarise the attributes of the hypothetical tenant, he is a mere lifeless automaton, free from all sentiment, a somewhat imaginary person, who wants similar premises in a similar position for a similar purpose; he is assumed to have ordinary judgment and caution, to have the necessary skill and capital, and to occupy the same position in life as the actual tenant. Under these conditions he will give only a reasonable rent; his competition, however, with the actual tenant can hardly ever have the effect of reducing the actual rental, for the very necessities of the position assume that the actual tenant will offer the highest price his judgment and caution tell him he can afford, with a view to secure the premises. As an invariable result, therefore, the actual tenant suffers in competition with the hypothetical tenant, and what has been not inappropriately described by an eminent English Judge as the principle of 'the higgling of the market' always results in loss suffered by the actual tenant.

"On all these grounds, therefore, I would ask the Council to do away with the system which leads to so much uncertainty and injustice."

The Hon'ble MR BAKER said:—"I don't propose to discuss this question as a matter of law, because I am not qualified to do so; but I shall show with less difficulty than I anticipated that this amendment is certainly one which ought not to be accepted. The Hon'ble Mover of the amendment began by saying that yesterday we rejected the principle of a hypothetical tenant in the case of residential houses. That statement I listened to with surprise, as I understood that the decision of the Council yesterday affirmed the principle of assuming a hypothetical tenant in the case of residential houses occupied by their owners. There was nothing in the debate in the Council yesterday to show that the principle of the hypothetical tenant is to be rejected. The amendment now before the Council is to insert the words 'is actually let or' after the

word 'building' in line 5 of clause (a) of section 148A (*now* 151). There are several reasons for not accepting this amendment. In the first place, the words which the Hon'ble Member proposes to insert are not to be found in the English Act, which is the basis of the law of rating in this country. It is a most difficult and intricate subject, and I think that the mere fact that the English law does not contain these words is a strong reason for not introducing them here. The Hon'ble Member wishes it to be laid down that when a building is actually let the actual rent paid is to be the measure of the annual value of such building. If that is the Hon'ble Member's intention, then I ask the Council not to accept it: it is a most dangerous principle. We wish to have power to go behind the terms of a lease if it is necessary to do so, and the insertion of these words will tend to make it difficult to do so. Then I am not quite sure whether the intention of the Hon'ble Member does not conflict with the principle of *communibus annis* well known in the English law. Suppose a house is let from year to year at a rental of Rs. 60, and in the third year it falls vacant. The intention, as I understand the principle of *communibus annis*, is not to assume that in the third year the house has no value at all, but that the average rental shall be taken all through. But putting that aside—and I lay no stress on it, because I am not a lawyer—there is one serious reason why this principle cannot be accepted, namely, that it will immediately open the door to fraudulent leases. *Benami* leases are very common here already. If the assessor cannot go behind a lease which is put forward, it will open a door at once to the execution of fraudulent leases. For these reasons I submit that this amendment is not in accordance with the English law, and ought not to be accepted."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I think the annual rent at which land or building is let, or at which it might be expected to let, will be exactly the same if there is no fraud or collusion. The provision in clause (a) of section 148A (*now* 151) is a safeguard against dishonest proceedings. But, if the alternative proposed in this amendment is adopted, it will open a door to fraud and collusion. It will give rise to a lot of *benami* transactions, and instances are not wanting which illustrate such fraudulent transactions."

The Hon'ble MR. HANDLEY said:—"I wish to endorse the objections which have been raised to this amendment by the Hon'ble Member in charge of the Bill, and I agree with the Hon'ble Babu Boikanta Nath Sen that the introduction of the words proposed will open a door to fraudulent transactions, and that might be the case not only where a lease has been actually executed, but even in cases where there is no lease, as is the case of most tenancies in Calcutta. What would be easier than to put down a rental of Rs. 5 a month payable by a bustee tenant where he actually pays Rs. 10. Is there any possible way of proving the existence of a fraud of that kind? The other point is where a large premium is paid by the tenant, and as a consequence a small rent. The Hon'ble Mover of the amendment draws attention to the hardship suffered by a tenant who has to pay rates on a higher letting value where he had discounted that letting value by paying a higher premium. How does he propose to meet that difficulty? I know many cases of this kind, and will only refer to one or two by way of illustration. In the Bhoikolas estate within my own experience the present owners have let their interest in a lot or holding at a high premium and a nominal or pepper-corn rent. The annual rent in the case of religious *mutis* or *debatter* properties may be only Rs. 2 or Rs. 3, the assessment upon which would come to something absurd; whereas the fine or premium which is paid may be very large. This is a device which is well known to the Hindu members of this Council, and in such cases, if there is no other method of valuation than the actual rent paid, the Municipality will be a great loser."

The Hon'ble MR. OLDHAM said:—"I should like to support the Hon'ble Member in charge of the Bill in his recollection of the result of the discussion which took place yesterday on the question of the principle of a hypothetical tenant. The Hon'ble Mover of the amendment said that the Council had discarded the principle of the hypothetical tenant; but, so far from discarding it, when I first heard the exposition of the law as it has now been settled in

England, which was so lucidly given yesterday by the Hon'ble Member who represents the University, it seemed to me that it was the very solution which had been sought for, for so many years, to meet the cases of Hindu owners of their residences in this town. This explanation is of great importance, for I myself have heard Babu Kally Nath Mitter assert three times at public meetings that, so far from the rates assessed upon the owners of residential houses being 19½ per cent., they amounted to something like 38 or 40 per cent. I would particularly commend to my hon'ble friend, Babu Surendranath Banerjee, the way I would put the case for the information of his friends who feel so aggrieved, and if I am wrong I trust the Hon'ble Dr. Asutosh Mukhopadhyaya will correct me. When the discussion of this question took place in this Council in 1888, the English law on the subject was quite unsettled. Sir Henry Harrison saw that there was something not equitable in the English law as applied to Hindu residences in Calcutta, and he tried to find a more perfect principle in the doctrines of Mill, and he then devised his own remedy. In 1893 the House of Lords settled the law by creating the legal fiction of the imaginary tenant, and Sir Henry Harrison meanwhile had settled it here by laying down the 5 per cent. rule, and thus finding the imaginary tenant. It appears to me that the results of the 5 per cent. rule are exactly the same as if the principle of an imaginary tenant is adopted, and I may say it is the opinion of that very careful and competent officer of the Corporation, our Vice-Chairman, that these provisions are proper provisions."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I should not like to give a silent vote on this question. I have considerable sympathy with this amendment of the Hon'ble Member, his object being to alleviate the burden of taxation which this section throws upon the people of Calcutta. But I fear there are serious practical difficulties in the way. I had a conversation on this matter with the Vice-Chairman of the Corporation, and I asked his opinion. He said the great objection to it is that it will open a door to fraudulent transactions, that people will enter into *benami* transactions, that they will get up leases which were not real transactions, and on the strength of such leases would obtain reductions of their just dues. The present practice is to insist on the production of a lease for three years. The Vice-Chairman is not satisfied with a lease for less than three years. I find that in this matter the law of 1876 is opposed to the amendment of my Hon'ble friend, and, as I said before, I pin my faith on the law of 1876.

"This view of the matter is supported by the Corporation. They pin their faith on the law of 1876, and I am sure that there will be serious practical difficulties in carrying out this amendment. It will be attended with abuse, it might lead to loss of revenue, and it will tend to demoralize the people. I therefore support that view."

The Hon'ble MR. BOLTON said:—"One point in the remarks of the Hon'ble Mover of the amendment has received no reply. He referred to the case of a three years' lease granted on payment of a premium. No tenant, however, enters into a lease for a house without taking into account the municipal taxes for which he accepts liability, and, whether a premium is paid or not, the contract with the landlord will cover that liability and no more."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I was surprised to hear that the Council has not discarded the principle of the hypothetical tenant, but has accepted it and has engrafted on it another fiction, namely, that the rent which such a tenant might be assumed to pay was 5 per cent. on the estimated present structural cost of the building *plus* the value of the land; so that it is the blending of two fictions. At any rate, that is not what I understood to be the drift of the discussion which took place yesterday. It has been pointed out by several Hon'ble Members that, if my amendment is accepted, it will open the way to fraud and might lead to difficulties. I thought the language of my amendment made ample provision for that difficulty, and that,

at any rate, difficulties which might arise would not be more serious than those which now exist. My amendment says 'actually let.' I premise that there has been an actual letting. If the Chairman is convinced that there has not been an actual letting, but only a paper transaction, he would have to apply the principle of a hypothetical tenant. The section further says that the annual value shall be deemed to be the gross annual rent. I take it that that means the actual rent, not merely any nominal amount which may be stated in the lease. But, if the investigation of these questions leads to serious practical difficulties, I venture to think that they will not be half so serious as the difficulties to which the present mode of assessment inevitably leads us."

The motion was then put and lost.

The last motion having been lost, Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the motion standing in his name that in section 148A (now 151), proviso (i), line 3, after the word "land" the words "is actually let or" be inserted.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA also moved that in section 148A (now 151), clause (b), line 5, the word "present" be omitted.

He said:—"As the Hon'ble Member in charge of the Bill assures me that the Council has not abandoned the principle of the hypothetical tenant, I hope this amendment will be carried, inasmuch as it follows as a necessary corollary from that principle. When a man has invested capital in constructing a building for residential purposes, you assume that he is willing to pay to the contractor reasonable remuneration, arbitrarily fixed at 5 per cent. on the actual outlay. In other words, the contractor's theory is based on the assumption that, because a person has spent a certain sum upon the creation of a property and occupies it himself, such occupying owner must be presumed to be equally willing to pay adequate remuneration to a contractor for land and capital invested therein. Assuming this theory to be well founded, as the Council has already signified its adherence to it, I desire to point out that the introduction of the word 'present' makes the fiction even more mythical, and absolutely inconsistent with the facts. Let me illustrate the position by a concrete case. In 1890 A builds a house for Rs. 10,000 for residential purposes. In order to assess the rateable value you introduce the fiction that, because he has sunk so much capital, he must be presumed to be willing to pay 5 per cent. to a contractor who might have built it for him; upon this fiction you assess the annual value at Rs. 500. Suppose you have to re-assess it in 1900; you find that, on account of the rise in prices of the materials and the difficulty in procuring labour, the present cost of re-building the house would be fifteen thousand rupees, and you assess the annual value of the house at 5 per cent. upon the fifteen thousand rupees. Here you assume in fact the absolutely baseless fiction that the owner is able and willing to invest fifteen thousand rupees and to pay a reasonable remuneration to a contractor who might have built a house for him at an outlay of that sum. The owner protests that you cannot impute any such intention to him; he protests that he has not invested fifteen thousand rupees, is unwilling to invest so much, is possibly unable to do so. It seems to me, Sir, that having introduced a fiction which has no foundation in fact, you are overlaying it with another fiction which is absolutely contradictory to the facts. The absurdity of the position is so manifest that it only requires to be stated to be rightly appreciated."

The Hon'ble Mr. BAKER said:—"The Hon'ble mover of the amendment says that if he sunk Rs. 10,000 in building a house in 1890, then he may be assumed to have expected a return of 5 per cent. upon Rs. 10,000, and he thinks it unjust to assume that he expects to have a return of 5 per cent. on Rs. 15,000 in 1900. The answer to that is that he has actually got a return of 5 per cent. on Rs. 15,000, because the value of the building has increased. If the value of the building has increased, why should he not be assessed on the increased value? The effect of the amendment would be to fix the annual value of the house for all time once for all. Apart from the

question of depreciation, the value would be determined once and for ever by the original cost of construction. That, I submit, conflicts with the English principle of *rebus sic stantibus*. The rule is this:—

‘Property must be assessed at the value it possesses at the time the assessment is made; if it increases or diminishes in value from time to time, there will be a corresponding increase or diminution in the rate, for that must be always proportionate to the then existing value, and the value of the property in the past or the future is immaterial.’

“It is quite clear that the proposal of the Hon’ble Member is in conflict with that principle. Moreover, the principle for which the Hon’ble Member contends will make it a matter of considerable difficulty to determine the annual value of a house built, it may be, half a century ago; whereas it would not be difficult for the assessor to form an estimate of the cost of erecting the building at the present moment. How could you ascertain the cost of erecting that building forty or fifty years ago? We don’t know what the value of materials then was, nor what was the cost of labour. It would make it absolutely impossible to ascertain what sum should be taken as the value of the building.”

The Hon’ble BABU SURENDRANATH BANERJEE said:—“I support the amendment. The Hon’ble Member in charge of the Bill says that, if this amendment is accepted, the annual value will be fixed once for all, and no increase whatever can take place. I respectfully beg to traverse that statement, and I think the Hon’ble Member will be convinced that he is wrong. The annual value of a house is the resultant of two factors. It depends upon the present estimated cost of erecting the building *plus* the value of the land. The value of land is steadily increasing; it always must increase in a progressive city. Therefore, if one factor is to remain constant, the other factor will be always increasing; and therefore there will not be that permanent fixture of the annual value which the Hon’ble Member says will result from the acceptance of this amendment. Then the Hon’ble Member says it will be difficult to estimate the cost of erecting a house built long ago. I think it is an equally difficult matter to estimate the present cost of the building, and we have a statement from the executive of the Municipality, and which I read to the Council yesterday, which entirely corroborates that view. I know that the effect of adopting this amendment will lead to a diminution in the receipts, and the question is whether we should be justified in legislating in such a way as to reduce the municipal revenues. I think that is the real crux of the whole matter; but it seems to me, as I said yesterday, that the operation of this principle of ascertaining the annual value of a building is very oppressive in respect of a particular class of the community, and that in justice to them we are bound to take the earliest opportunity to revise this provision of the Act of 1888. I do not think the loss of municipal revenue will be very great, for there will be a progressive increase derived from the steady increase in the value of the land which is taking place, though I admit the increase will not be so great as it would be if the law was allowed to remain as it is at present. Taking all these circumstances into consideration, I think the Council would be justified in accepting this amendment.”

The Hon’ble MR. BOLTON said:—“I entirely support the Hon’ble Member in charge of the Bill in opposing this amendment. Objection has been taken to the Hon’ble Member’s remark that the value of property would remain at a constant figure; but what the Hon’ble Member said was that the value of the building, and not of the land, would remain fixed under the amendment. That statement was correct. The Hon’ble Member has used a very forcible argument in pointing out that, if this amendment is passed, great difficulty would arise in estimating the value of a building which might have been constructed forty or fifty years ago. It is a further argument in favour of the present provision that, in claiming compensation for houses under the Land Acquisition Act, the owners themselves base their claims on the estimated *present* cost of erecting the buildings subject to deduction for depreciation. To the sum so calculated is added the 15 per cent. compensation for dispossession.

The Hon'ble BABU BOIKANTA NATH SEN said:—"If this amendment is accepted, the latter portion of the clause will be harmonious with the previous portion 'less a reasonable amount deducted on account of depreciation'—depreciation of what?—on the original cost of construction, and that will be harmonious with the elimination of the qualification introduced by the word 'present' in the clause."

The Hon'ble MR. HANDLEY said:—"I have one or two remarks to make upon this amendment. What ground has the Hon'ble Mover of the amendment to suppose that the value of a building has increased by 50 *per cent.* within the last eight or ten years? That seems to me to be far beyond the fact. The second point to which I wish to refer is, what means have we of ascertaining the original cost of a building? If a building was constructed, say, from twenty to forty years ago, how is the present owner of the building, who might be a son or other successor of the original owner, to know what was the original cost of the building? I have known land acquisition cases where the present proprietors have made a claim for a certain sum, and it has been found impossible to ascertain what was the original cost of the building, though in some instances we have been able to unearth from the records of the Municipal Office what the original claim was; and in such cases it has been found that the compensation claimed has been double the sum originally claimed. I fear that the acceptance of this amendment will open a door to all manner of frauds, such as the fabrication of bills in the name of some builder. On both these points, therefore, I think this motion is open to the same objection as the last amendment."

"As regards the statement of the Hon'ble Babu Surendranath Banerjee as to the increase in the value of land, it is true that the value of land is increasing, but at the same time the value of the building would be depreciating, and I doubt whether the increase in the value of the land will be greater than the loss by depreciation in value of the building. I doubt whether the value of the land and the building together will in any way be increased by the lapse of time. I think the value of the building will depreciate more than the increase in the value of the land."

The Hon'ble MR. BAKER said:—"I desire to explain, with reference to what has been said by the Hon'ble Babu Surendranath Banerjee, that, when I said that the annual value would be fixed once for all by the operation of this amendment, I was referring to the building, not to the land. It is quite clear that any rise in the value of the land will affect the value of the house and land taken together; but I was referring to the building itself. If you are to determine the value of the building by taking five *per cent.* on the original cost, obviously it will be fixed once and for ever. There will be neither a rise nor a fall."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I thought the Hon'ble Member was referring to the whole cost of the building and the land. I withdraw my remark."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I was not surprised to hear the Hon'ble Member in charge of the Bill quoting the English law on this subject; for when my hon'ble friend is driven to defend a position which is absolutely unsustainable, he seeks for authorities and precedents in every quarter. I repeat that I shall not have the smallest objection if my hon'ble friend will agree to give us the English system in its pristine purity; but he will never be able to induce me to accept it in an adulterated form. I confess I find it difficult to understand how a valuation of Rs. 15,000 can in any way be beneficial to the owner who spent Rs. 10,000 ten years previous to the date of the assessment; but I can well understand his misfortune in having to pay a municipal rate on Rs. 15,000, when he actually invested only Rs. 10,000 on the building of the house. The strongest argument of the Hon'ble Member is that, if you accept my amendment, you fix the valuation for all time to come. But you must not forget that you fix a profit-rate of five *per cent.* for all time to come. Whatever the state of the market may be, a hypothetical tenant is assumed to be always willing to pay five *per cent.* on the structural cost. You accepted that position when you rejected my motion that the

annual value should be calculated according to the highest rate of interest payable on Government securities. If, then, you can assume a profit-rate of five *per cent.* for all time to come, there is no reason why you should not assess a building on the basis of the initial structural cost. As a serious practical difficulty, it has been asked how can you ascertain the actual structural cost of a building erected forty or fifty years ago? But, if you will consider the matter for a moment, you will see that the difficulty here is not greater than what you find in the system you propose to adopt. Take a building raised fifty years ago. What does the assessor do? He estimates the present cost of erecting the building, but this estimated amount must necessarily vary with a number of uncertain elements; for instance, a European architect will charge considerably more than a Native builder. Then, again, you have to deduct a reasonable amount on account of depreciation. Depreciation is a relative term, and must of necessity have reference to the condition of the building when it was originally built. You must compare the original and the present state of the building; so that, if you really give effect to the present law, you are bound to determine what the value of the building was when it was first erected."

The motion was then put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 148A (now 151), clause (b), for the words "present cost of erecting the building, less a reasonable amount to be deducted on account of depreciation, if any," the words "market value of the building" be substituted.

He said:—"In moving the last amendment I explained the hypothesis upon which the contractor's theory is based, and the object of the present amendment is to bring the law into harmony with that principle. The whole basis of the principle is that, when a person has invested a certain amount of capital in a building, he must be presumed to be willing to forego the interest derivable from that amount by any other mode of investment. Now, consider a case in which a person, instead of building a house for himself, purchases one which he considers suitable for residential purposes. Assume that he pays ten thousand rupees for it, and assume for a moment that, if he had to build it himself, it would have cost him fifteen thousand rupees. Now comes your municipal assessor and says that he must be assessed at five *per cent.* upon fifteen thousand rupees. The owner protests that he has not invested fifteen thousand rupees, and that you cannot impute to him any intention to forego the interest derivable from fifteen thousand rupees. He says, and rightly says, that whatever intention, by the stretch of your imagination, you can impute to him in respect of the ten thousand rupees he has actually invested, you have no right to indulge in your fancy in respect of the five thousand which he has not invested. He protests that this is not a legitimate assumption to make. This anomaly, at any rate, you will obviate, if you assume as the basis of your calculation the market value of the building, instead of the present cost of re-erecting it.

"But then, it is said, how can we apply the doctrine of market value to a thing for which there is no market; for it is assumed that there is no market for these residential buildings, which are not built to be let or sold. I challenge the correctness of this assumption, and absolutely deny its accuracy. The majority of the buildings used by the middle classes of the community in the city for purposes of residence frequently change hands, and, if you take statistics, you will find that, though there are thousands of people who live in their own houses, it is not correct to say that they live in houses which they have built for themselves. For these houses there is a market, and there cannot be the slightest difficulty in estimating their market value. There might, no doubt, be some few houses in the city—the residences of wealthy men—which have never changed hands and for which there is no market in the sense that if you were to put them up to auction you might not find a large number of competitors. But the difficulty of estimating the market value in these exceptional cases would not in the least approximate to the difficulty of ascertaining the amount of rent payable by a hypothetical tenant or the

amount of reasonable deduction on account of depreciation. I submit, therefore, that the acceptance of the market value as the basis of our calculation will remove a good deal of speculation, and enable us to do away with the anomalies I have pointed out."

The Hon'ble Mr. BAKER said:—"This same proposal was brought forward in 1888, and Sir Henry Harrison was at first disposed to accept it; but he was dissuaded from doing so by the representations which were made by Sir Charles Paul and Mr. Allen. Those two leaders of the legal profession expressed the opinion that the term 'market value' was fraught with far more embarrassment than the method of valuation proposed in the Bill, and Sir Henry Harrison and the Council considered they would be wise in allowing themselves to be guided by the opinion of their legal advisers. I think we had better follow that opinion on the present occasion. The hon'ble mover of the amendment has said that the adoption of his proposal would cause less difficulty than the assessment of a house according to the method laid down in the Bill by means of a percentage on the estimated present cost of constructing the building. The great objection to this proposal is that it will bring back the whole of the difficulty which we were dealing with yesterday on the question of the assessment of residential houses in a different form. The difficulty of ascertaining the rent in these cases is only greater than the difficulty of ascertaining their market value, because these houses have really no market, or at most only a very restricted market. It was said in 1888, on the authority of Babu Nilmoney Mitter, an eminent Indian engineer, that even if such a house was sold immediately after it was built, when it was brand new, it would not fetch the amount of money which was expended in its construction. It was also stated in 1888 that there would practically be only two classes of cases in which houses of this kind would come into the market, and those two classes gave very different results. The first is where a building of this class is taken possession of under the operation of the Land Acquisition Act. There is great opposition to this on the part of the owner, and he does all in his power to raise the value of the property, and the compensation awarded in such cases is exceedingly high. On the other hand, when a house of this kind comes into the market owing to the bankruptcy of the owner or the disappearance of his family or any such misfortune, the price obtained is usually very low. It was estimated in 1888 that in such cases the difference between the market value under the Land Acquisition Act and the market value in the case of these forced sales is often as great as 50 per cent. It will therefore be exceedingly difficult to take the market value as the standard of value."

The Hon'ble Mr. OLDHAM said:—"I wish briefly to explain that the only difference which exists between the hon'ble mover of the amendment and the Hon'ble Member in charge of the Bill and myself is as to a question of fact. But take even the Hon'ble Member's facts. He states with confidence that there are thousands of houses which have a market value. Still that leaves thousands of houses which have no market value."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I support this amendment. Yesterday I spoke on the lines of this amendment, and the Hon'ble Member in charge of the Bill said in reply that it would be fraught with difficulty. But is there not such a principle in the Land Acquisition Act, and is not the market value daily settled in land acquisition cases? Did my Hon'ble friend the Legal Remembrancer, who was recently Judge of the 24-Pargannas, find any difficulty in deciding such cases? There may be difficulties, but I cannot understand that there will be serious difficulties if the principle of the market value is accepted. The thing is done from day to day under the Land Acquisition Act."

The Hon'ble Mr. OLDHAM said:—"We find immense difficulty in the Board of Revenue."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"That is because you proceed in the wrong way: if you proceed in the proper way, there will

be little or no difficulty. There may be a restricted market as regards such spacious buildings as the houses erected by Babu Nundo Lal Bose and Maharaja Sir Jotendra Mohan Tagore; but I venture to assert within my personal knowledge that there is a wide and open market for the sale of small houses in Calcutta. They are constantly changing hands, and I don't think there is any difficulty in ascertaining the market value of such houses. But, as I said yesterday, I desire to place the question of the market value on other than legal grounds. I say it is but equitable that you should proceed on the basis of the market value. A man purchases a house for Rs. 10,000; that is the value he has paid for the house. The assessor comes next day and assesses the house at Rs. 15,000 in accordance with the principle laid down for the valuation of such houses. So that practically the owner has to pay rates not on the amount of money for which he purchased the house, but on the fictitious and imaginary valuation arrived at in accordance with this provision of the law. I wish to brush aside all considerations connected with the legal bearings of the case and put it on the high considerations of justice and equity. Is it fair, I ask, that a man who purchases a house for Rs. 10,000 should have to pay rates assessed on a valuation of Rs. 15,000. That is not right and equitable. It does not commend itself to my notions of justice and equity; and I feel sure it would not commend itself to the judgment of Hon'ble Members if it were divested of the difficulties which are believed to surround the subject. I wish the Council to decide this question on the broad principles of equity, and, if it is looked at from that point of view, I am confident Hon'ble Members will be in favour of the amendment."

The Hon'ble Mr. BOLTON said:—"The Hon'ble Member who has just spoken has mentioned the case of a man who purchases a house for Rs. 10,000 and is assessed at Rs. 15,000. There is the obvious remedy in such a case of an appeal to the Vice-Chairman, and from the decision of the Vice-Chairman an appeal may be lodged before the Small Cause Court—a perfectly independent tribunal. It is impossible to provide absolutely against error or unfairness in valuation, but the appellate authorities are there to redress injustice."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I wish to say, by way of a personal explanation, that I was glad to hear the announcement which the Hon'ble Member made regarding the appointment of a Commission of Enquiry, and, if the Vice-Chairman of the Corporation is examined before that Commission, I know what he will say. I know his views in this matter. I am also certain that he will say, having regard to the many cases which come before him and the inadequate information upon which he has to decide, that he is not able to do justice. The Hon'ble Member is aware that the Vice-Chairman wants to be allowed a horse allowance; he wants to go about and test the work of the amins. We have amins upon whom the Vice-Chairman is obliged to depend. A particular house was assessed in Ward No. 1. It was the ward of Babu Bhupendro Nath Bose. The assessment was doubled or trebled, but the most extraordinary part of the affair was that there was no such house, and that discovery was made subsequently. This is the way business is now done."

The Hon'ble Mr. OLDHAM said:—"It so happened that I was discussing this very question with the Vice-Chairman four days ago, and the views I gathered from him were exactly the contrary to those which have been expressed by the Hon'ble Member who has just spoken, not as regards the particular house to which the Hon'ble Member has alluded, but as regards the statement that, if the Vice-Chairman was able to go about, the result would be different. The Vice-Chairman's opinion was that, if he was able to go about and examine these assessments, the results would be very considerable enhancements. Then, as regards the case of a house erected or purchased at a cost of Rs. 10,000, and valued for purposes of assessment at Rs. 15,000. Suppose a person got possession of a currency note of Rs. 100 for Rs. 50, would he be supposed to be the possessor of Rs. 50 or Rs. 100?"

The Hon'ble BABU BOIKANTA NATH SEN said:—"I consider it obvious that injustice will be done if a rate of 5 *per cent.* be taken upon the valuation of

a house made in the manner provided by this provision of the Bill, but such injustice will be obviated if the amendment to take a percentage upon the market value is adopted."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said :—"I find myself in a hopeless maze, from which I am unable to extricate myself. I was assured not long ago that we have adopted the doctrine of a hypothetical tenant. Relying upon this assurance, I endeavour fairly to carry out that doctrine to its legitimate conclusion; but, before I proceed an inch, I am stopped. My hon'ble friend, the Member in charge of the Bill, quoted the high authority of Sir Charles Paul and Mr. Allen; I can assure him that I entertain a very high opinion of the learning and ability of those gentlemen, and if their advice to the Government had been on a legal question, I would have respected the authority of their opinion. But this is not a legal matter. In their opinion, it is a more difficult matter to ascertain the market value of a building than to ascertain the cost of rebuilding it and making a reasonable allowance for depreciation. I respectfully join issue upon that point. As my hon'ble friend has pointed out, in cases decided under the Land Acquisition Act the market value of buildings has to be ascertained. When the whole question was reopened in 1894 in connection with that Act, a strenuous effort was made to do away with the principle of market value; but the supporters of the doctrine of market value made good their position in the Imperial Legislative Council and succeeded in keeping the existing provisions of the law intact. If District Judges in hearing land acquisition cases do not find much difficulty in ascertaining the market value of buildings, I cannot see why the municipal assessor should find greater difficulty. The Hon'ble Mr. Oldham says that, if there are thousands of houses for which there is a market value, there are also thousands of houses for which there is no market value; but in England, where the principle of market value is followed, there occur cases in which there is strictly no market value, and yet the Courts have found no difficulty in dealing with them; and I hope that, if my amendment is carried, there will be no difficulty in carrying out that principle here also."

The motion being put, the Council divided as follows :—

<i>Ayes 6.</i>	<i>Noes 12.</i>
The Hon'ble Raja Bahadur Ranajit Sinha, of Nashipur.	The Hon'ble Mr. Buckley.
The Hon'ble Babu Jatra Mohan Sen.	The Hon'ble Mr. Buckland.
The Hon'ble Babu Boikanta Nath Sen.	The Hon'ble Mr. Handley.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Rai Durga Gati Banerjee, Bahadur.
The Hon'ble Mr. Apear.	The Hon'ble Mr. Mackenzie.
The Hon'ble Dr. Asutosh Mukhopadhyaya.	The Hon'ble Mr. Spink.
	The Hon'ble Sahibzada Mahomed Bakhtyar Shah.
	The Hon'ble Khan Bahadur Maulvi Delawar Hossain Ahmed.
	The Hon'ble Mr. Oldham.
	The Hon'ble Mr. Baker.
	The Hon'ble Mr. Bolton.
	The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 148A (now 151, after proviso (iv), the following be added :—

"(e) In calculating the value of land under this section, where such land is held by the owner as an estate or part of an estate subject to the payment of revenue to the Government, the amount of revenue so payable shall be deducted from the gross annual rent."

He said :—"I was in hopes that the minute relief which I sought by this amendment might escape the observation of the Hon'ble Member in charge of the Bill, but I regret to find that application for relief, however minute or inconsiderable, is bound to meet with opposition. The principle of this

amendment may be very briefly explained. Under our municipal law, one-half of the consolidated rate is to be paid by the occupier and the other half by the owner. This term 'owner' does not necessarily include one single individual. It will include everybody above the occupier. As a matter of practice the owner's share is levied from the person who stands immediately above the actual occupier, and there is no unfairness in that, because it is only a matter of contribution as between himself and his superior landlord. It is a matter of contract between them; but, when this superior landlord happens to be the Government, he cannot call on the Government to contribute, and therefore he cannot get any relief at all, but has to bear the whole burden. Let us, therefore, in all fairness exclude from the amount of gross rental the amount of revenue paid to the Government. I am assured by high authority that this will not materially affect the municipal revenues, because in most cases the amount of the Government revenue is so small that it will not afford any appreciable relief to any one. But, though this may be the case in the town of Calcutta proper, it will not be so in the added area, where there are some holdings for which the amount of revenue is considerable; and, if a deduction is made, some relief may be afforded. I feel sure that the Hon'ble Member in charge of the Bill will say that this is such a small matter that we may leave it alone; such a contention would be tenable if it was a matter which would seriously affect the municipal revenues; but, as it will afford some relief, though small, to occupiers, I hope the Hon'ble Member will accept the amendment."

The Hon'ble MR. BAKER said:—"It is quite true that this is a small matter. The total amount of the ground rent and revenue payable to the Government in Calcutta and the Suburbs is only Rs. 85,400. The whole of the soil in the town of Calcutta is formed of holdings, which pay ground rent to the Government of Bengal amounting to Rs. 18,400 a year; and, as regards the Suburbs, there is only one portion in which there is any revenue payable at all. I will read to the Council a letter from the Collector of the 24-Parganas, which states the facts. He says:—

'The added area of Calcutta consists, for revenue purposes, of two portions, viz., (1) the area west of Tolly's Nala, comprising Alipore, Chetla, Kidderpore and a portion of Garden Reach, and (2) the tract east of Tolly's Nala and the Lower Circular Road, which comprises Bhawanipur, Ballygunge and Entally. The whole of the latter tract is in Panchannogram Government estate, but I cannot tell you what the revenue is, because Panchannogram includes also Cossipore-Chitpur and Maniktola Municipalities, as well as portions of South Dum-Dum and the South Suburban Municipality. The rent-rate of the holdings in Panchannogram varies from Rs. 1 to Rs. 3 per bigha. The latter rate, or Rs. 9 per acre, is the usual rate. The average rate is, however, only Rs. 5 per acre, and applying this rate to the area of this tract, which I estimate to be 9½ square miles, the rental may be reckoned at Rs. 34,400.

'The portion of the added area west of Tolly's Nala is ordinary permanently-settled land belonging to private owners. The revenue rate of the permanently-settled estate in this district is about 8 annas a bigha. A considerable area is, however, included in Government estate Saheban Bagicha, where the rent-rate is Rs. 3 per bigha. For the whole area of this tract, which may be 6½ square miles, I estimate the revenue, at the rate of Rs. 3 per acre, at Rs. 12,500. For round figures the revenue and rental paid to Government in the added area may be estimated at Rs. 47,000. This does not include the rental of the Orphananj market, which is about Rs. 60,000. I think that the amendment you write of will occasion practical difficulties. Strictly speaking, no revenue is paid for lands in the town of Calcutta, for in 1758 the East India Company obtained a *sanad* from the Nawab for the *lakhiraj* tenure of the villages comprising Calcutta, the revenue of these villages, amounting to Rs. 8,836, being remitted. The rents collected in Calcutta are in fact *ground-rents*, and not revenue.

'Panchannogram is held under a similar tenure, viz., a revenue-free or *lakhiraj* grant renewed by the Nawab Mir Jaffer in 1758. The holdings in this estate pay *rent*, and not revenue, and are liable to sale for arrears of rent as tenures under Act VII (B.O.) of 1868.

'The Government estate Saheban Bagicha consisted of country houses of Europeans originally. These formerly belonged to private estates, but the proprietors having represented to the Company, at some date before the decennial settlement, that they could not recover their rents, the Company remitted their revenue *pro tanto*, and undertook the collection of the rents of these lands. The holders are therefore tenants, and they pay *rent*, not revenue.'

"It is only in that part of the added area which forms a portion of the permanently-settled tract that any revenue is paid at all. Therefore, the

first objection to this amendment is that it will exclude the greater part of the town from coming under its operation at all. People living in the metropolis of Calcutta and in the Suburbs who pay a sum which is not strictly revenue will get no relief, while other people living within permanently-settled estates will receive relief, and, as I have said before, the total amount is absolutely insignificant."

The Hon'ble BABU JATRA MOHAN SEN said:—"I agree with the Hon'ble Member in charge of the Bill that this amendment will give only very small relief to a few persons, but, if some slight alteration is made in the amendment, the object of the hon'ble mover might be met by omitting the words 'as an estate and part of an estate' and inserting the words 'or rent' after 'revenue'."

The Hon'ble MR. BAKER said:—"This is a substantial alteration which cannot be moved without notice, but I do not press the objection."

The Hon'ble MR. OLDFHAM said:—"I do not understand the proposal made by my old Chittagong friend, the Hon'ble Babu Jatra Mohan Sen. Does he understand that the Panchannogram estate on which Calcutta is built, is precisely in the same position as the Noabad estate in Chittagong with which he is so familiar? The effect of the amendment will be that where people pay rent to Government the rent is to be deducted; but where they pay rent to a zamindar no deduction is to be made."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"After the explanation given by the Hon'ble Member in charge of the Bill, I will not press the amendment."

The motion was then, by leave of the Council, withdrawn.

SECTION 152.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that proviso (c) to section 148B (*now* 152) be omitted.

He said:—"This proviso has somewhat puzzled me. I have not been able to make out what cases are intended to be included in it: I suggest that it be omitted."

The Hon'ble MR. BAKER said:—"I agree. There is nothing on record to show how this proviso was inserted, and the Assistant Secretary is not aware how it came in."

The motion was put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 148B, proviso (g) [*now* section 152, proviso (e)], line 12, after the word "force" be added "from the date of the application."

He said:—"I wish to have it made quite clear from what time the alteration is to take effect. My original idea was that the re-valuation should be enforced from the date of the depreciation. I have been in consultation with the Hon'ble Member in charge of the Bill, and he has pointed out that this would not be fair, for, if there was depreciation and the owner did not make any application, he could not very well blame the Municipality for not reducing the assessment. On the other hand, if he made an application and it was not disposed of for months, he ought not to be made to suffer; it would therefore be fair to put in these words."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Suppose the application is made in the middle of a quarter, there would be a difficulty. I was going to make a suggestion: it is that the new valuation should take effect 'from the quarter following the date of the application' That is the present law in the mufassal. We could not allow the benefit of half the rate from the

date of the application, because it would introduce complications into the accounts. If it is provided that the application is to be given effect to from the quarter subsequent to the date of the application, I think, Sir, that would do away with the complications which might otherwise arise."

The Hon'ble MR. BAKER said:—"I have no objection to that."

The Hon'ble THE PRESIDENT said:—"I should say 'from the beginning of the quarter following the date of the application'."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I accept that."

The motion was then put in the amended form and carried.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 148B, proviso (j) [now section 152, proviso (g)], after the words "the Chairman may" be inserted "if he thinks fit," and that for the words "all the sharers" be substituted "any of the share-holders interested individually or collectively to the extent of one moiety or upwards."

He said:—"The section as I propose to amend it will read:—

'If, during the currency of any period mentioned in sub-section (I), the ownership of any building or land or portion thereof be subdivided into separate shares, the Chairman may, if he thinks fit, on the application of any of the shareholders interested individually or collectively to the extent of one moiety or upwards, apportion the assessment on such building, land or portion among such sharers according to the value of their respective shares; and such apportionment shall be in force, and the consolidated rate shall be levied according to it, until the expiration of the said period.'

"I confess, Sir, that this question is not free from difficulties, but I hope that by the insertion of the words 'if he thinks fit' after the word 'may' all practical difficulty will be removed. The section, as it stands, authorizes the Chairman to apportion the assessment of any building or land upon the application of all the shareholders. My amendment is to the effect that he should be in a position to do so upon the application of any shareholders interested individually or collectively to the extent of one moiety or upwards, and my object is this: the case which the section contemplates is the case of all the shareholders being willing to have the rates divided amongst themselves. That is a contingency not very likely to happen. The question would ordinarily arise only when some of the owners are willing to pay the rates and the others are not willing to do so. Suppose there are two shareholders—one of them owns 14 annas and the other owns 2 annas; the 2 annas' shareholder is dishonest enough to think that he need not pay the rates; the 14 annas' shareholder has to pay the whole, and his only remedy is to seek relief by the tedious process of a contribution suit. In such a case as that, the 14 annas' shareholder should obviously have some speedy remedy. He owns a large share of the property, and his co-sharer confessedly is not willing to pay. In such a case, I venture to think, the 14 annas' shareholder ought to be in a position to make an application to the Chairman, and, if the Chairman thinks fit, he may apportion the rates. The practical difficulties to which I allude are two—first, it may be said that there may be a dispute as to the shares. I think that is quite possible. If so, there would be ample discretion in the Chairman to withhold his hands. I would here invite your attention to section 364 (now 365), where you will find a similar provision. The first clause of section 364 (now 365) is as follows:—

- '(I) When two or more adjoining plots of land are, by reason of their shape, situation or size, individually unsuitable for the construction of buildings in accordance with the provisions of this Act and the rules and bye-laws made hereunder, and the owners of such plots cannot agree to amalgamate and re-divide the plots in order to admit of the construction of buildings as aforesaid, the General Committee may, on the written request of the owners of not less than three-fourths of the area of such plots, take possession of the land and form it into suitable building sites.'

"You do not here provide that action can be taken only upon the representation of the entire body of owners. If another illustration is necessary, I may refer to the Partition Act of 1893, section 2, where also you will find a similar provision. I am ready to admit that, if it was made compulsory upon the Chairman to apportion the rates upon the application of some only of the co-sharers, practical difficulties might arise. He might be called upon to decide questions which ought properly in the first instance to be discussed in a Civil Court.

"Then, in the second place, it might be urged that, if the application is made by some only of the shareholders or by the majority of them, the others might remain in complete ignorance of the proceedings. But, I take it, the Chairman would ordinarily decline to make any orders under this clause unless he had before him all the shareholders, or, at any rate, unless he was satisfied that due notice had been served upon all of them. I, therefore, venture to think that with the limitations proposed, the section as amended will be workable and can lead to no practical difficulties."

The Hon'ble Mr. BAKER:—"This is a matter of some difficulty, but I have had an opportunity of discussing it with the hon'ble mover and the Chairman, and I think, with the addition of the words which have been proposed to-day, the section will be free from objection. I am therefore prepared to accept the amendment."

The motion was put and agreed to.

SECTION 161.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved that in section 148L (now 161), sub-section (2), after the word "appears" be added "or of any person duly authorised on his behalf."

He said:—"Sub-section (2) of section 148L (now 161) reads as follows:—

'At the said time and place the Chairman shall hear the objection, in the presence of the objector if he appears, or may, for reasonable cause, adjourn the investigation.'

"I confess, Sir, that I was somewhat upset by the word 'presence.' Take, for instance, the case of an infant or of a *pardanashin* lady; surely it is not intended that the infant or *pardanashin* lady should be present before the Chairman. It would be quite enough if they were represented, not necessarily by a lawyer, but by any authorised agent. I feel sure it is not intended that they should appear in person."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The present practice is for the person to appear himself or by an authorised agent. So that there is absolutely no objection in accepting my friend's amendment."

The Hon'ble Mr. BAKER said:—"The rule which the Select Committee followed was not to put in any words which would give a statutory right to appear by an authorised agent, but simply to leave it to the practice of the Corporation or the General Committee. Is it worth while to make any change? I admit that these words in themselves are absolutely free from objection, but is it worth while to insert them in the Bill? The words are the same in the present law: 'at the said time and place the Chairman shall hear the objection in the presence of the objector if he appears, or may for reasonable cause adjourn the investigation.' How would it be to leave out those words 'in the presence of the objector if he appears'?"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Suppose he was to dispose of the case in the absence of the objector?"

The Hon'ble Mr. BAKER said:—"If the Hon'ble Member will accept that modification, I have no objection."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA then said:—"I would be quite satisfied with this amended form. My only objection was to the words 'in the presence of the objector,' which are absolutely misleading."

The Hon'ble THE PRESIDENT said:—"Then, instead of adding, 'the Hon'ble Member subtracts, and I understand the motion is that in section 148L (now 161), clause (2), the words 'in the presence of the objector if he appears' be omitted."

The Hon'ble MR. OLDHAM said:—"I would oppose that amendment. I do not like the appearance of the section with that omission. I should like to adhere to the existing law, that is, the law in section 136 of the present Act and in this Bill, and I would adhere to the present practice."

The Hon'ble THE PRESIDENT said:—"It is rather an important thing to have a clause in the section that it is expected that the objector shall be present and the disposal of the objection shall be in his presence."

The motion in the amended form was then put and lost.

SECTION 162.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that after sub-section (2) of section 148M (now 162) the following be inserted:—

"(2a) The provisions of Parts II and III of the Indian Limitation Act, 1977, shall apply to every such appeal."

He said:—"My object, Sir, in moving this amendment is to avoid as far as possible the discussion of difficult questions of law. Section 148M (now 162) says:—

'Any person dissatisfied with the orders passed on his objection may appeal to the Court of Small Causes having jurisdiction in the place where the building or land is situated.

'(2) Such appeal must be presented to the Court of Small Causes within thirty days of the decision of the objection under section 148L (now 161), and must be accompanied by an extract from the register of objections containing the orders objected to.

'(3) No appeal shall be admitted under this section unless an objection has first been taken under section 148L (now 161).'

"A question which may be raised, and often has been raised, is whether in preferring such an appeal as this it would be open to the appellant to deduct the time which must necessarily elapse for taking a copy of the order made against him. If he were appealing against an order of a Civil Court, he would be entitled to the deduction as a matter of right. I want to have the matter cleared up, and I simply say that the provisions of the Limitation Act which apply to ordinary appeals shall also apply here."

The Hon'ble MR. BAKER said:—"No such difficulty has ever been brought to my notice. It is a matter of law, and I do not propose to say much about it. I should have thought that, as the Indian Limitation Act is a general Act, the provisions of Parts II and III apply to all India."

The Hon'ble BABU JATRA MOHAN SEN said:—"My impression is that the general provisions of the Limitation Act do apply, but at the same time it would be safe to have this proviso."

The Hon'ble THE PRESIDENT said:—"I am addressing myself to the Hon'ble the Legal Remembrancer. This section provides a period of limitation for an appeal of thirty days. Now, let it be supposed that the Indian Limitation Act in similar cases prescribes sixty days. Of course a special provision in this Act

would over-ride the Indian Limitation Act as regards the period of limitation; but would the fact that we had inserted a period of limitation of thirty days exclude the Indian Limitation Act as regards Parts II and III?"

The Hon'ble Mr. HANDLEY said:—"I do not think so, Sir. Section 12 of the Limitation Act provides as follows:—

'In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

'In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

'Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

'In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.'

I should think that would apply also to this section, even though it is a special law."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, in reply, said:—"This discussion illustrates precisely what I want to avoid. In this room we have lawyers who do not agree, and I am quite sure that, if two of them were to sit down to argue this question, they would satisfactorily argue it both ways. Uncertainty in the law is the chief thing I want to avoid."

The Hon'ble BABU BOIKANTA NATH SEN said:—"No doubt there is considerable force in what the hon'ble mover of the amendment has observed. It is much better to be on the safe side. The applicability of the general law of limitation with regard to special Acts is a matter which admits of argument on both sides. It is not a point which has been very conclusively settled. There is a difference of opinion as regards the applicability of the general law of limitation to control special Acts. It is a doubtful point therefore, and it is only to be on the safe side that this amendment might be accepted."

The Hon'ble Mr. BAKER said:—"I think, having regard to what has fallen from the various legal Members, it would be wiser to accept the amendment. The intention is that proceedings before the Small Cause Court should be governed by those parts of the Limitation Act, and my only doubt was whether that effect would not be produced without the insertion of those words. As there seems to be some doubt on the point, I think the Council would do well to accept the amendment."

The motion was then put and agreed to.

SECTION 163.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved that in section 148N (now 163), sub-section (3), after the word "shall" the following words be inserted:—

"subject to the provisions of section 6 of the Presidency Small Cause Courts Act, 1882, or section 25 of the Provincial Small Cause Courts Act, 1887, as the case may be."

He said:—"I may mention at the outset that this does not stand on the same footing as a similar amendment of mine, which I had the honour to move on a previous occasion. What I intend to do by this section is to confer on the High Court power which it does not possess under its charter, but power, which it derives under certain special Acts, of revising the proceedings of the Small Cause Court upon questions of law. Section 25 of the Provincial Small Cause Courts Act provides that, if a case has been decided by a Court of Small Causes, the High Court may send for the record, and, if there has been an error of law, may make such order as it deems necessary. Subject to this superintendence of the High Court, the decision of a Small Cause Court is final. Appeals in assessment cases will lie to the Court of Small Causes, and the

question is whether, after a case has been decided by a Court of Small Causes, it is desirable that its decision should be absolutely final or should be open to revision upon a question of law only—not upon a question of fact—by the High Court? I think it is desirable that the High Court should have such power. I shall illustrate the position by a recent case in point which the Corporation will not speedily forget. Last year under the existing Act there was a case of assessment in which the rate-payer said that the whole process of valuation adopted by the Municipality was wrong. There was an appeal to the Court of Small Causes; the Judge of the Small Cause Court decided in favour of the rate-payer; the Corporation moved the High Court and obtained a rule under section 25 of the Provincial Small Cause Courts Act. There could not possibly be any doubt that the question of law which was raised was a very important and difficult one, because, I find from this Bill, the provisions of the old Act relating to that matter have been changed; but although the question of law raised was a very important one—of importance not only in that case, but of importance in all similar cases—the High Court had no jurisdiction to interfere. And why? The Small Cause Courts Act says:—‘Nothing in this Act shall affect any of the provisions of a local Act.’ The Calcutta Municipal Act is a local Act, and therefore the Judges held that section 25 of the Provincial Small Cause Courts Act had no application whatsoever: in other words, if this had been a case decided by a Judge of the Small Cause Court under the Small Cause Courts Act, the High Court would have been entitled to interfere; but as he decided it under the Calcutta Municipal Act, and not under the Small Cause Courts Act, the High Court was powerless. The only way it could interfere would be under its charter, but it never interferes under its charter unless the subordinate Court has acted without jurisdiction, and confessedly the Small Cause Court had ample jurisdiction, even the jurisdiction to decide erroneously, in the matter. Therefore, although the decision of the Small Cause Court Judge was a very doubtful one, the High Court could not interfere; and it was fortunate for the Corporation that this Bill, at the time, was before the Select Committee, otherwise the consequence would have been that an erroneous decision of the Small Cause Court would have been binding upon the Municipality, the whole system of assessment would have been upset, and the mischief would have remained without remedy probably for years.

“I hope I have amply made out my position that the High Court should have the power of interference upon questions of law. I should add that, when the High Court interferes under section 25, it does not interfere simply because the party who moves the Court wants the Court to do so. The High Court will interfere only if a case is made out of absolute injustice; that is to say, it is not sufficient to say to the High Court that there has been an error of law; you must satisfy the Court that there has been an error of law which has caused grievous injustice to one party or another. I will give an instance: a creditor sued his debtor for money; the debtor was honest enough to take the defence of limitation and pleaded that the claim was barred; the Small Cause Court decided in favour of the creditor and overruled the plea of limitation, upon clearly erroneous grounds. The debtor moved the High Court, but the High Court said:—‘We are not going to interfere; it may be that the Small Cause Court Judge has erroneously decided the question of limitation, but the consequence has been that it has directed the debtor to pay his debt; we do not assist dishonest people.’ So that, if you confer this power upon the High Court, there will be no interference except for the sake of justice. We ought not to find ourselves absolutely helpless when a Small Cause Court Judge erroneously decides a novel or difficult question of law which, you may be sure, will frequently arise upon the construction of an Act which will be, perhaps, the longest on the statute book. Besides, there is no imaginable reason why the decisions of a Small Cause Court Judge under the Municipal Act should enjoy an absolute finality, while his other decisions, under the ordinary law, have only a qualified finality, and may be challenged any moment before the High Court.”

The Hon'ble MR. BAKER said:—“The Hon'ble Dr. Asutosh Mukhopadhyaya has discussed this matter with myself and the Chairman, and he has convinced us that it will be to the advantage of the Corporation to allow an

appeal to the High Court on questions of law from the decisions of the Small Cause Court. I therefore propose to accept the amendment."

The motion was then put and agreed to.

SECTION 165.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 148P (now 165), sub-section (1), line 5, before the word "which" the words "the reason for" be inserted.

He said :—"This is a small matter, and I believe my amendment gives effect to what was really intended. The amended section will read as follows :—

'Any owner or occupier may at any time apply to the Chairman to have his name entered as owner or occupier in the assessment-book; and the Chairman shall, unless there is sufficient reason to refuse such application (the reason for which refusal shall be recorded in writing), cause such name to be entered in the assessment-book.'

The Hon'ble MR. BAKER said :—"I accept the amendment."

The motion was put and agreed to.

SECTION 169.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 148SS (now 169), line 4, after "148M" (now 162) the words "or under section 148N (now 163), sub-section (3)," be inserted.

He said :—"There must have been some mistake in this, because it does not make sense. The section is as follows :—

'When the valuation of any building or land is revised in consequence of an objection made under section 148K (now 160) or an appeal preferred under section 148M (now 162), the revised valuation shall continue in force for the unexpired portion of the period for which the first-mentioned valuation was made, and no longer.'

"It ought to be 'or an application made under section 148N (now 163).' We have just amended section 148N (now 163), clause (3), so as to make it read 'Every decision made by the Court of Small Causes under section 145M (now 162) shall be final, subject to the provisions of section 6 of the Presidency Small Cause Courts Act, 1882, or section 25 of the Provincial Small Cause Courts Act, 1887, as the case may be.' Of course, if the High Court interferes upon a question of law and sets aside the valuation, that will have to be given effect to."

The Hon'ble MR. BAKER said :—"There is no application made under section 148N (now 163), even as amended."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—"In that case I would not alter the section, but leave it as it is."

The motion was then, by leave of the Council, withdrawn.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 148SS (now 169), line 5, the words "till the end" be substituted for the words "for the unexpired portion."

He said :—"The decision referred to in section 148SS (now 169) is meant to be prospective and retrospective. I do not know whether the words I have proposed to substitute here would commend themselves to the Hon'ble Member in charge of the Bill. If they do not, I do not press the amendment."

The Hon'ble MR. BAKER said :—"I do not see any object in making the change."

The motion was then, by leave of the Council, withdrawn.

The Hon'ble BABU JATRA MOHAN SEN moved that the following proviso be added to section 148SS (now 169), namely:—

"Provided that no question decided under section 148K (now 160) or section 148M (now 162) shall be re-opened at the re-valuation on the expiration of the period for which the previous re-valuation was made, if the facts and circumstances on which the decision was arrived at continue to exist on the expiration of the said period."

He said:—"If for instance a house or building is exempt for assessment under the law, but was assessed by the municipal authority, and the assessment was set aside by the Calcutta Small Cause Court under the provisions of this chapter, it would not be admissible to re-open the proceedings at the re-valuation. It would be incurring useless expense. The Municipality will have to incur expense if the matter is re-opened, and the party also would be harassed if he has to go again to the Small Cause Court to establish his point. To guard against such an injustice I have thought fit to put in this proviso."

The Hon'ble MR. BAKER said:—"If this amendment has any effect at all, it can only be to throw purely technical difficulties in the way of a re-valuation. If that is not the effect of it, it has no effect; for if, as a matter of fact, the circumstances and the facts did remain unchanged, then there would be no ground for altering a valuation and no re-valuation would be made. I myself regard the amendment as unpractical, and I hope it will not be accepted."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am in strong sympathy with the amendment of the Hon'ble Babu Jatra Mohan Sen, because the effect would be no enhancement of the valuation at all. It would, no doubt, be undoing the work which we have been doing for the last couple of days, but, if the Council is prepared to accept it, I certainly will not stand in the way. I certainly would welcome it, because it would be exactly in form with some of the amendments which I myself have moved and which have been rejected. I have not the smallest objection, but the only difficulty is that it is at variance with the decision of the Council in regard to three amendments running on the same lines."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I desire to point out that the amendment completely defeats its own object. It says:—

"Provided that no question decided under section 148K (now 160) or section 148M (now 162) shall be re-opened at the re-valuation on the expiration of the period for which the previous re-valuation was made, if the facts and circumstances on which the decision was arrived at continue to exist on the expiration of the said period."

"But those facts and circumstances are precisely what we have to investigate for the purpose of ascertaining whether there is to be any alteration in the re-valuation or not. In order to give effect to the amendment you must make out whether the facts and circumstances continue to exist. I do not see what is to be gained by it."

The Hon'ble BABU JATRA MOHAN SEN, in reply, said:—"It seems to me that there is no contradiction whatever in this amendment. Of course, the authority deciding as to whether it should revise or not would have to see as to whether the facts and circumstances do continue to exist as before."

The motion was then put and lost.

SECTION 150.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Before I proceed to move my next amendment on the paper, I want to remind the Hon'ble Member in charge of the Bill that he has entrusted me with an amendment which I may call the 'poor man's' amendment, and, if he would allow me, I would move it now."

The Hon'ble MR. BAKER said:—"That is a matter in which the Hon'ble Babu Surendranath Banerjee and myself have been in communication, and I am

prepared to accept the amendment if he moves it. It ought to have been introduced a little sooner; but the Secretary will no doubt insert it in its right place."

The Hon'ble BABU SURENDRANATH BANERJEE, by leave of the President, moved that the following sub-section be inserted in section 148 (now 150), namely:—

"With the previous sanction of the Local Government, the Corporation may, by resolution, exempt from the consolidated rate all buildings and lands the annual valuation of which, as determined under this Chapter, does not exceed twenty rupees or such smaller sum as may be specified in such resolution:

Provided that no person shall be entitled to claim the benefit of such exemption if he owns or occupies more than one building or piece of land and the aggregate annual valuation of all the buildings or lands owned or occupied by him exceeds twenty rupees or the smaller sum specified in the said resolution."

He said:—"I raised this point at the meeting of the Select Committee. I suggested to the Select Committee that it would be only right and proper that very small houses should be exempted from the assessment, and the figure that I ventured to suggest was Rs. 25 or Rs. 20. This is altogether an enabling section, that is to say, it gives the Corporation power by resolution, subject to the approval of the Local Government, to exempt from the consolidated rate all buildings of a certain assessment and below a certain assessment. The figure is taken very low. It is all buildings assessed at Rs. 20 or under which may be so exempted, and there is this safeguard that, if they are to be exempted, the exemption must take place subject to a resolution of the Corporation, and further this resolution must be confirmed by the Local Government. Therefore you have guarantees which make it impossible for the Corporation to abuse the power which it is proposed to confer on it. It is important to know what the financial effect of an exemption like this would be, and here I may say that I placed myself in communication with the Municipal Executive. I had an opportunity of talking this matter over with the Vice-Chairman. He thought the exemption might be estimated at about Rs. 10,000 annually, but in estimating this loss of Rs. 10,000 we should bear in mind that you dispense with the necessity of writing out a large number of small bills. That means a saving of expenditure, and that expenditure may be set down at Rs. 2,000 or Rs. 3,000, and then, what is more important, you do not let loose the municipal underlings upon a helpless class of the community. The rate which would be paid by huts assessed at Rs. 20 would be at 20 *per cent.*, about one rupee per quarter, and you exempt all houses which contribute to the consolidated rates to the extent of Rs. 1 per quarter. These people constitute the poorest section of the community, and you have to incur considerable expenditure in writing out these bills and in providing machinery for collection; and there is the further fact that you send your underlings to these people to realise the amount, and there is that demoralization consequent on the underlings being brought in contact with them. Having regard to the fact that the Corporation loses little, if anything, and that relief is given to a class of the community who deserve this relief, I trust, Sir, that this amendment will be accepted by the Council. Yesterday I ventured to call attention to the principle of John Stuart Mill with regard to the assessment of residential houses. John Stuart Mill laid down the principle that the annual valuation should be 5 *per cent.* or 4 *per cent.*, according to the prevailing rate of Government securities, of the present estimated cost of buildings plus the value of the land upon which these buildings stand, and he supplemented this principle by another principle, *vis.*, that the house-tax being in the nature of an income-tax, houses below a certain assessment ought to be exempted from the house-tax. This amendment, if accepted, would go some way to give effect to this principle. You have accepted the principle of John Stuart Mill in one part of the Bill; it is right and proper you should accept it in another. And having regard to the relief to the poor owners, the very slight loss which the Corporation would incur; and the avoidance of the demoralization which also would be the necessary result, I trust that there will be a unanimous vote with regard to this matter."

The Hon'ble MR. OLDHAM said :— "I am sorry I must oppose this amendment. In the Select Committee a note of discord was raised as to this matter. Ever since I have been in the Corporation I have had to play the part of the stony-hearted Commissioner and to remonstrate again and again against other people's money being given away for private charitable institutions. I remember this question being discussed in Select Committee, and the proposal was strongly opposed not only by myself, but by Babu Narendra Nath Sen, on the ground that if people choose to live under this Corporation, and to obtain certain services from the city, they should pay for them, and if they do not wish to pay for these services they should go elsewhere. Although I fully appreciate the argument on which the hon'ble mover of the amendment lays most stress, that the striking off of these people's names will greatly simplify the work of the Corporation, and also relieve them from the Municipal underlings, I would also point out that such a section of the community would be stamped as paupers and as people who receive charity, and that the effect of the amendment would be an invitation to people of this class to come to Calcutta."

The Hon'ble MR. BAKER said :—"I think, Sir, the exemption from house-tax of buildings assessed below a certain sum stands on exactly the same footing as the exemption of incomes below a certain figure from income-tax, and I never heard that people who are exempt from income-tax are regarded as being pauperised by that exemption. I am in entire sympathy with the mover of the amendment. I think there is a very large class of poor people in Calcutta who have great difficulty in paying their rates, and it would be a great relief to these people if some measure of this kind should be accepted. We have provided in this amendment ample safeguards against the possible abuse of the power. The Corporation has to fix a limit, and they have to pass a resolution; the resolution has to be confirmed by Government, and there is also a proviso, that the exemption is not to apply to people who own more than one piece of land or more than one building, and in whose case the aggregate value of such buildings exceeds the particular limit. I think with those safeguards there is very little danger of such a provision being abused."

The Hon'ble MR. APCAR said :—"I also support this amendment. As it now has worked, many are exempt by special order, and they are not compelled to pay because of their poverty, and as the Hon'ble Member in charge of the Bill has said, there are ample safeguards, which would be sufficient to obviate any abuse of the power that is here given. Those poor who happen to live here in Calcutta are here under circumstances which made it necessary for them, I suppose, to live within the jurisdiction of the Corporation. In the Suburbs before the amalgamation they were only paying $7\frac{1}{2}$ per cent. Now they have to pay $19\frac{1}{2}$ per cent., and it may be they will yet have to pay 23 per cent. I think it is a very hard measure to regard it in such a stern light as the Hon'ble Mr. Oldham has, and to compel these poor people to strike their tents and move away. Where are they to go? They are living here among their relations and people and earning their livelihood. Are we to deprive them of their means of existence? I think I would leave them here to enable them to earn their living here. This measure is one which I think can be very well afforded in all circumstances by the Corporation."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said :—"I should like to say a word or two in reply to the remarks of the Hon'ble Mr. Oldham. I fully appreciate his motives, namely, to safeguard the financial interests of the Corporation, and of course those motives must be exceedingly strong now, having regard to the fact that he stands alone as the champion of the financial interest of the Corporation, having been deserted by a large number of his colleagues, and I strongly sympathise with him. I desire to point out that in the mufassal we have exactly the same law, namely, that although there the people receive the services which it is in the power of the Municipality to render, the Municipality has got the power under the Act to exempt persons entirely from the payment of the rate—a benefit which is enjoyed by the poor in the mufassal towns."

The Hon'ble MR. OLDHAM said:—"As individuals, not as a class."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I think it should be as a class rather than as individuals. As regards an individual, personal feeling may come into operation. I think, Sir, ours is a better system than the law which prevails in the mufassal, and I hope and trust, when the mufassal law comes to be revised, it will be revised upon the lines of the amendment which I have just laid before the Council. I trust that even the note of discord which the Hon'ble Mr. Oldham has raised in this matter will be withdrawn when the final vote upon this matter is taken."

The Hon'ble THE PRESIDENT said:—"I was under the impression that the mufassal municipalities did authorise 'general exemption,' but I find on referring to the law that the Hon'ble Mr. Oldham is right, and that power is only given to Commissioners to exempt in individual cases. However, I am very pleased to express my entire concurrence in the proposal of the Hon'ble Babu Surendranath Banerjee. I speak here personally. I do not wish to influence in any way the votes of the Council."

The motion was then put and agreed to.

SECTION 171.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "or before" after the words "payable on" in line 4 of section 149 (now 171) be omitted.

He said:—"The section as I propose to amend it, will read as follows:—

'One-half of the consolidated rate shall be payable by the owners of the buildings and lands, and the other half by the occupiers thereof; and each such instalment shall be payable on the fifteenth day of April, the fifteenth day of July, the fifteenth day of October, and the fifteenth day of January for the quarters respectively commencing on the first day of each of those months.'

"The words as they stand in the section are 'shall be payable on or before the 15th April.' I think you ought to give a precise date. You ought to say payable on such a date, and not 'on or before.' It seems to me that that is a more precise form of expression, and then I am to point out to the Council that that is the present law. In the existing law we have not got the words 'payable on or before,' but 'payable on 15th day of April.' I confess it is a very small matter, but, as we are legislating, it is as well that we should be precise."

The Hon'ble MR. BAKER said:—"In the present Act the words are 'payable on the first day of each quarter,' not 'on the 15th day of each quarter.' I am very much surprised at this amendment. In the original Bill the words were 'shall be paid on the 15th day of April,' and I think it was at the instance of the Hon'ble Member himself that it was changed to 'payable on or before.'"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"But it is a precise date."

The Hon'ble MR. BAKER said:—"Yes; on the first day of each quarter."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The date is immaterial, but it must be a precise date."

The Hon'ble MR. BAKER said:—"It is quite precise. You could not have it payable on or before the first day of the quarter."

The Hon'ble MR. APCAR said:—"I think if a person is willing to pay before the 15th day of April, he ought to be encouraged."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If the Hon'ble Member in charge of the Bill has any serious objection, I do not want to press this amendment."

The motion was then, by leave of the Council, withdrawn.

SECTION 172.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that section 150 (*now* 172) be omitted.

He said:—"I have explained my position with reference to this section in the course of my speech upon the first amendment* which I had the honour to move this morning in connection with section 148A (*now* 151). I do not think it necessary to repeat those arguments. My contention is that it would be better to leave this matter to be settled by the contracting parties. The section says:—

'If the annual value of any building or land, as determined under this Chapter, exceed in any case the amount of rent payable to the owner, the owner may in such case recover from the person who pays him rent the difference between the sum assessed upon him as the owner's share of the consolidated rate and the sum at which he would have been assessed had the building or land been valued only at the amount of rent actually payable to him, and such difference shall be added to the rent and shall be recoverable by the owner from the person liable for the payment of the rent.'

"The Council could not have failed to observe that the assessment to which this section is applied is based upon the fictitious principle that the tenant holds under a lease from year to year. As a matter of fact we have often to deal with landlords and tenants when there is not a lease from year to year but a lease for a longer period; this necessarily affects the rent, which may, further, be affected by the amount of the premium paid. If so, it is not necessary, I venture to think, that the Legislature should interfere between them and lay it down as an absolute and inflexible rule of law that, whenever an arbitrary assessment, made in accordance with the provisions of this Act, does not agree with the actual rental, the owner should be placed in a position of advantage to which he may not always be entitled. Section 150 (*now* 172) is based upon the presumption that whenever the assessment for municipal purposes exceeds the actual rent, the rent assessed is the fair rent. As I have already explained, there is no foundation for this assumption. I venture to think that, whatever we may do for the purposes of municipal assessment, we need not trouble ourselves about the relation between landlords and tenants. They may well be left to settle that matter between themselves."

The Hon'ble MR. BAKER said:—"I need not say very much in reply to the remarks that have been made by the hon'ble mover of the amendment. The principle of the assessment clauses of the Bill is that we are to have regard to the annual value of the holding as determined under the Bill. If the actual rental differs by being either above or below the determined annual value, it is ignored altogether. This section gives effect to that principle. I think, as we have accepted that principle in the main sections of the Bill, we are bound to follow it now. The Hon'ble Member in speaking on the original amendment instanced the case of a man who leased a house, and received a large premium and a very small rental. That is clearly the case in which this section would apply, and I think it ought to apply. There is no reason in a case like that why the owner should be saddled with the whole of the rates which would have been payable by him had he received the consideration for the house in the form of a rent only, and not rent *plus* premium."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The present section is the existing law, and I do not know that any complaint has ever been made as to the operation of this law, and it seems to me, whatever might be the view a lawyer might take, the law is perfectly fair and equitable. The principle laid down is a principle which commends itself to me as fair and legitimate. The existing law has not been attended with any hardship; it has worked well, and I have the Vice-Chairman's authority for it. In these circumstances it seems to me that the section ought to be allowed to remain as it is."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I think the present section ought to be maintained. The particular shares of the cesses payable by tenure-holders and raiyats to zamindars are all clearly defined. It has not been left to the law of contract being applied for a rateable contribution. By analogy, therefore, I think the section ought to be allowed to stand as it is."

The Hon'ble BABU JATRA MOHAN SEN said:—"I think the section ought not to be disturbed. In cases of excess assessment, power has been given to the owner to realize it from the tenant, but in case of under assessment no corresponding power seems to have been given to the tenant to have this tax reduced. I would urge, therefore, that the contractual relations between landlord and tenant should not be disturbed."

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, said:—"I oppose this amendment. If this section be omitted, it will be hard upon owners, as they will have to pay the extra tax from their own pockets, which is not fair."

The motion was then put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 150 (*now* 172), line 11, after "recoverable" the words "as rent" be inserted.

He said:—"This is a very small matter. My object is to place this section on the same footing as section 162 (*now* 183), which provides as follows:—

"Every owner who is entitled under section 158 (*now* 179) or section 161 (*now* 182) to recover any sum from the occupier of any building or of any portion thereof, or from the owner of any hut or masonry building in a bustee, shall have, for the recovery of such sum, all remedies, powers, rights and authorities which he has for the recovery of rent."

"If the section is amended as I suggest, then no question can arise as to the Court which will have jurisdiction over suits for the recovery of the sums specified in this section."

The Hon'ble MR. BAKER said:—"I do not see any particular objection to this. At first I was disposed to think that if the owner had any other right of recovery, other than in the form of rent, it would be unreasonable to take it away; but on consideration I am disposed to think that is not the intention of the section. It was all along intended that he should recover it as rent, and not in any other form."

The motion was put and agreed to.

SECTION 175.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 152A (*now* 175) all the words from "and" in line 5 to the end be omitted.

He said:—"I suggest the omission of the following words from section 152A: 'and such period shall be calculated from the date on which such notice is delivered at the municipal office.'

"I wish to point out that, if these words are allowed to stand, section 152A (*now* 175) becomes inconsistent with section 151 (*now* 173), which provides as follows:—

"When any building or land whereon the consolidated rate is assessed has remained unoccupied and unproductive of rent for a period of sixty or more consecutive days during any year, the person liable to pay the owner's share of the consolidated rate shall, if written notice of the facts be given to the Chairman, be liable to pay only one-fourth of the consolidated rate due on account of such period; and, if more than one-fourth of the consolidated rate has been paid in advance, the surplus shall, on demand, be refunded."

"This is followed by section 152A (*now* 175), which says that the owner would be entitled to the benefit of the section only from the date when he served a notice on the Corporation. To illustrate how this will work, let me put a concrete case. A house is vacant for 62 days; the owner is entitled to a reduction of the rates from the date of the vacancy, provided he serves a notice on the Corporation on that date. But, if the house had been vacant for

less than 60 days, he would not have been entitled to any reduction at all. In other words, you require the owner to give notice before the expiry of the 60 days, though he may never become entitled to the benefit of the section. This seems to me to be wholly unnecessary: for ordinary purposes, it ought to be sufficient if notice is given at any time during the vacancy."

The Hon'ble Mr. BAKER said:—"This section reproduces the existing law. It was not an oversight. It was the intention of the framers of the original Bill and of the Select Committee to follow the existing practice, and the object of these words is to prevent an *ex post facto* application for remission."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I do not think that any case has been made out for a change in the law. It is the existing law, it has worked well, and I do not think there is any necessity for changing it."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I regret I cannot make myself intelligible either to the Hon'ble Member in charge of the Bill or the Hon'ble Babu Surendranath Banerjee; but sections 151 and 152A (now 173 and 175) seem to be absolutely inconsistent, because you say that, as soon as the house has been vacant for one day, the owner must give notice, although there may be a vacancy for less than 60 days, and he may never become entitled to the reduction with a view to which he admittedly gives notice. He notifies to the Corporation the fact of the vacancy, avowedly for the purpose of getting a reduction in the rates, but till there has been a vacancy for 60 days he himself does not know whether he is or is not entitled to such reduction. When an argument is unanswerable, the easiest way to escape is to pin one's faith to the existing law, which, I take it, is an emblem of perfection."

The motion was then put and lost.

NEW SECTION.

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, moved that the following section be inserted after section 152A (now 175):—

"152B. For the purposes of sections 151 and 152 neither the presence of a caretaker nor the mere retention in an otherwise unoccupied dwelling-house of the furniture habitually used in it shall constitute occupation of the house."

He said:—"The section which I now propose to be inserted was in the original Bill. It was struck out by the Select Committee on the ground that it would involve a loss to the municipality. Sir, we should consider what is just and unjust. Calcutta is the metropolis of India, and so men living in different parts of the empire have to come here occasionally, and especially during the winter, when it becomes the seat of the Government, and many of them have to keep furnished houses here which are not occupied even for a month during the whole year. So the mere presence of a durwan or a caretaker or mere retention of some articles of furniture should not be deemed to constitute occupation when there is no occupation at all. I hope the Council will accept my amendment."

The Hon'ble Mr. BAKER said:—"I desire to support this amendment. It was in the original Bill, as the Hon'ble Raja has pointed out. It is taken from section 64, clause (4), of the Punjab Municipal Act, and it seems to me entirely consistent with equity. It affects chiefly the case of the occupier. As the Hon'ble Raja has pointed out, when the occupier is absent from his house for any reason, it is impossible for him to get any benefit from the various services rendered by the Municipality. He can make no use of the water-supply; he can make no use of the lighting or of the roads. It seems to me to be entirely unjust that occupier's rates should be charged in a case like that, and the mere fact that he has a caretaker or a durwan, and that he leaves his furniture there, seems to me not to be any justification for levying these rates. The caretaker uses an inconsiderable quantity of water, and at all events he cannot utilise the municipal services to anything approaching the same degree as the occupier would utilise them if he was himself present."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I should have rejoiced if I could have found it possible to support the amendment of my hon'ble friend Raja Ranajit Sinha. I presume the Hon'ble Member in charge of the Bill, in making the speech to which we have listened, has spoken on his own personal behalf and not on behalf of the Select Committee; because the Select Committee distinctly recommended that this clause, which found a place in the original Bill, should be withdrawn, and by a vote of the majority it was withdrawn. We gave the matter our anxious consideration, and we all came to the deliberate conclusion that the Simla people who come here and who are birds of passage—I do not mean to speak disrespectfully—ought to contribute their share to the municipal taxes of Calcutta. The Hon'ble Member in charge of the Bill has remarked that when an occupier is away he cannot enjoy municipal benefits, and therefore it is not right that he should be called upon to make any contribution to the municipal funds. I am delighted to find the Hon'ble Member in such deep sympathy with occupiers. Hitherto his sympathy has been with the Municipality; now my friend sympathises with the occupiers of houses. I ask him to look at the matter from the Corporation's point of view. If the occupier was pleased to leave the house altogether, some other occupier would take it and the municipal rates would be paid. I think it is from that point of view that the Council ought to look at a matter like this. The question is not whether the occupier reaps the benefits of municipal services, but whether he ought to be permitted to deprive the Corporation of taxes which the Corporation might have received if he did not stand in the way. He stands in the way, he prevents another person from occupying that house, and surely he ought to make good to the Corporation the taxes which the Corporation would otherwise have received. This very question was discussed in this Council in connection with the mufassal Municipal Bill, and I am perfectly certain the authority of Mr. Herbert Reynolds would be regarded as of great weight by Members of this Council. I desire to read an extract from a speech which he made in this connection, and I want to point out to my hon'ble friend the Member in charge of the Bill this further fact that, as he is so fond of quoting English precedents in support of his views, he will find that English precedents entirely support my view. This is what Mr. Reynolds said:—

'He would take this opportunity of mentioning that a representation had been made by the Deputy Commissioner of Darjeeling with reference to the necessity for a definition of a vacant holding. The Deputy Commissioner said it was a common thing for an unoccupied house in Darjeeling to be kept more or less furnished, and to be left in charge of a chaukidar or caretaker, and it was a question whether, as long as the owner received no rent, the holding should be treated as a vacant holding. Mr. Reynolds did not think that the holding should, under such circumstances, be considered a vacant holding, and he had not therefore brought forward any proposal for defining a vacant holding.'

"Then Mr. Collier, from whose book I quote, goes on to say:—

'The law is clear that a holding under the circumstances stated cannot be held to be vacant; and has been thus stated. Lush J., says (*Reg. v. St. Pancras*, 2 Q.B.D. 581): "The owner of a vacant house is in possession, and may maintain trespass against any one who invades it; but so long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it, and keeps it ready for habitation whenever he pleases to go to it, he is an occupier though he may not reside in it one day in the year." If the owner did not keep the furniture in the house he would have to keep it somewhere else, and he may, therefore, be regarded as making use of the house, at least as a warehouse for the furniture. Slight as such user may be, it is enough when added to legal possession to constitute occupation.'

"The provision which finds a place in this Bill is thus in entire conformity with the English law. It is in entire conformity with the mufassal law, and it seems to be in conformity with the principles of justice. It is only right and proper that the municipal funds should not in any way suffer. If the house was not furnished, although the person who furnished it might be away, somebody else would take the house. Somebody else is not permitted to contribute to the municipal funds by reason of the action of this occupier. Therefore I think, Sir, the person who has furnished the house ought to pay, and the municipal taxes ought not to suffer in consequence of his action in this matter. That seems to me to be the plain view of the matter."

The Hon'ble THE PRESIDENT said:—"I should like to ask the Hon'ble Babu Surendranath Banerjee a question on which he may be able to enlighten not only me but the rest of the Council. It seems to me that the practical question in this matter is whether, when an occupier leaves his house unoccupied by himself for a large part of the year, the number of such houses is sufficiently large to enable the Municipality to reduce its establishment in any kind of way. It is quite true, as the Hon'ble Member in charge of the Bill has said, that the occupier of the house, so long as he is not in personal occupation, does not use the municipal services as he would do if he were present, and it is also true that, if he let his house to somebody else, that person would use those services and would pay for them. What I should like to get from the Hon'ble Babu Surendranath Banerjee's personal knowledge of the matter is whether the number of such unoccupied houses is sufficiently large to enable the Municipality at any season of the year to reduce the establishment which fulfils those services for these unoccupied houses."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"No, Sir, I do not think we can reduce the establishment."

The Hon'ble MR. BOLTON said:—"I agree with the Hon'ble Babu Surendranath Banerjee in opposing this amendment. A tenant who retains a house throughout the year in Calcutta, although ordinarily residing elsewhere, does so to suit his own purpose. He needs it for occupation during a portion of the year or occasional visits. If it were not in his possession, another tenant would occupy it and pay the municipal taxes. It is right, therefore, that no portion of the taxes for the year should be remitted. Moreover, the landlord receives the rent, and should pay his portion of the taxes; but the amendment would exempt him also."

The Hon'ble MR. OLDHAM said:—"I, too, like every member of the Corporation, am in complete accord with what my hon'ble friend, the Hon'ble Babu Surendranath Banerjee, has said; and, as regards the question asked by Your Honour, not only can there be no reduction of the Municipal establishment in the case of these houses, but there is a very great chance of the municipal water being wasted because of the absence of the proper occupant of the house, the house being left to the servants."

The Hon'ble MR. MACKENZIE said:—"I should like to ask whether it is not the fact that when a house is unoccupied the water-supply is actually cut off. I think I am right in saying it is cut off."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If the rates are paid, it is not cut off."

The motion being then put, the Council divided as follows:—

Ayes 4.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Mr. Baker.

Noes 15.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.
The Hon'ble Mr. Spink.
The Hon'ble Khan Bahadur Maulvi Delawar
Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

The Hon'ble Babu Jatra Mohan Sen did not vote.

So the amendment was lost.

SECTION 179.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that to section 158 (now 179) the following be added:—

"Where such occupiers pay rent to the owner, the amount of rent paid by each shall ordinarily be the measure of the value of the portion of the building in his occupation."

He said :—“ Section 158 (now 179) says :—

‘When the entire rate is paid by the owner of any building under section 157 (now 178), such owner may, if there be but one occupier of the building, recover from such occupier half of the rate so paid by him, and may, if there be more than one occupier, recover from each occupier half of such sum as bears to the entire amount of rate so paid by the owner the same proportion as the value of the portion of the building in the occupation of such occupier bears to the entire value of such building.’

“To illustrate this, let us take a case in which a landlord has a house which he lets to several tenants. There are four tenants, and the landlord pays the entire rate. He is entitled to get the occupier's share of the rate from these four tenants, and the question arises how this is to be apportioned amongst them. The law provides that the apportionment is to depend upon the value of the building in the occupation of each tenant. The calculation of the value of the portion of the building in the occupation of each tenant may sometimes give rise to difficult questions; we may avoid this by recourse to the presumption that, when such occupiers pay rent to the owner, the amount of rent paid by each shall ordinarily be the measure of the value of the portion of the building in his occupation. I do not think there can be any dispute that the amount of rent paid by a tenant is ordinarily the measure of the value of the portion of the holding in his occupation. A man may be in occupation of two rooms, paying Rs. 8 a month, and another tenant may have one room, paying Rs. 6 a month, there being a difference in the situation of the rooms. We might ordinarily say that the measure of the value of the rooms in the possession of the one is Rs. 8, and the measure of the value of the other is Rs. 6. No doubt it may so happen, to take an extreme case, that a landlord may have allowed a relation of his to be in occupation of a room at a merely nominal rent. In that case the amount paid may not perhaps be the measure of the value of the room in his occupation; but I take it that ordinarily, if there is an actual tenancy and rent is paid, the amount of rent paid by the tenant may be taken to represent the value of the holding in his possession; the insertion of the word ‘ordinarily’ will amply meet any exceptional cases.”

The Hon'ble MR. BAKER said :—“It seems to me, Sir, that with the addition of the word ‘ordinarily’ this amendment becomes entirely superfluous, because it is quite true, as the Hon'ble Member has pointed out, that the rent paid by any one of these occupiers is ordinarily the measure of the value of the portion of the building which he occupies. Therefore, those words add nothing to the meaning of the section as it stands. But there are exceptional cases, and the Hon'ble Member has instanced one where the owner of a house may allow a poor relative to occupy part of the house paying either no rent or a pepper-corn rent, and in that case it is not equitable that the other tenants should pay higher rates on account of that private arrangement between the owner and his favoured tenant. In that special case the section is limited by the amendment and makes no provision for determining how the respective portions are to be ascertained. This section simply reproduces the existing law, and so far as I know it has never given rise to trouble, and I think it ought to be maintained. I would further point out that the whole of the assessment sections of the Bill proceed on the basis of the ascertained annual value, and not on the basis of actual rent. Therefore, I think in this case also we should adhere to that principle and not have regard to the actual rent.”

The motion was then put and lost.

SECTIONS 180 AND 181.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 159 (now 180), sub-section (2), all the words beginning with “and” in line 6 be omitted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that section 160 (now 181) be omitted.

He said :—“These two amendments are closely connected and may conveniently be discussed together.

“Section 159 (now 180) says :—

(1) Notwithstanding anything contained in section 149 (now 171), the entire consolidated rate leviable upon—

- (a) bustee land,
- (b) huts situated on bustee land, and

(c) any masonry building situated in a bustee on land which is not held on a lease for a term exceeding ten years, shall, after deducting therefrom a sum equal to one-eighth of such rate, be paid by the owner of such land.

(2) The sum so deducted shall be retained by the owner of the land as a set off against the expenses which may be incurred in collecting the portion of the rate recoverable under section 161 (now 182) from the owners of huts or such masonry buildings as aforesaid, and as a commutation of all refunds in respect of huts or such masonry buildings as aforesaid which are vacant or which may be removed or destroyed during the continuance of the period for which the rate is leviable.

"Section 160 (now 181) provides as follows:—

'The consolidated rate shall not be payable on account of any new huts built or any huts enlarged on bustee land during the year for which the valuation remains in force under proviso (c) to section 148B [now proviso (b) to section 152].'

"You will readily observe that the last clause of section 159 (now 180) is intended in a manner to compensate section 160 (now 181). This would be strictly so if in a bustee belonging to one owner during a portion of the year there were some huts vacant and in another portion of the year new huts were built. But, suppose that one bustee owner gets the advantage of sub-section (2) of section 159 (now 180) and another gets the benefit of section 160 (now 181), where is the compensation? Because one person builds some huts for which he has not to pay, there is no justification whatever why another man whose huts are vacant should be made to pay. To use a homely expression, I would say it was robbing Peter to pay Paul. I venture to think that in the last clause of section 159 (now 180), sub-section (2) all the words beginning with 'and' in line 6 and section 160 (now 181) should both be omitted. If huts are vacant, and if a bustee owner applies for a reduction, or if new huts are built, and it comes to the knowledge of the Municipality, the Municipality would be entitled to re-assess in either case.

"The strongest argument against my amendments is an appeal to the existing law. I know, Sir, this is the existing law, but we have destroyed the existing law in so many particulars that I do not think I should hesitate to change it in this respect also."

The Hon'ble Mr. BAKER said :—"The Hon'ble Member will have to show, I think, that the existing law has worked badly in this particular before the Council can be expected to alter it, and I have never heard of any complaint as to this particular provision. The effect of the amendments would be that the Municipality would be obliged to assess all new huts as soon as they were built in a bustee, and that would be a matter of extreme inconvenience. These huts are temporary structures. They are the property of the tenants and not of the bustee owner, and they are able to be put up quickly, and they may be removed within a month. It would be a matter of extreme difficulty to get all these assessed at once, and it is a much more convenient arrangement that the assessment should be for a whole year, leaving any changes that may take place within the year unadjusted."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I entirely agree with what the Hon'ble Member in charge of the Bill has said. The practical difficulty will be serious in the way of giving effect to my hon'ble friend's amendments. There are constant changes in these huts; people are coming and going, and all those applications would have to be submitted to the Corporation. I do not think it would be possible to carry out my Hon'ble friend's suggestion. And then, Sir, we have got this safeguard: huts are assessed once a year, so that whatever vacancies occurred they would come to light in the course of the year, and it strikes me that the practical difficulties are so serious that it would be impossible to carry out my friend's suggestion."

The motions were then put and lost.

SECTION 180.

The Hon'ble BARU SURENDRANATH BANERJEE moved that for section 159 (now 180) the following be substituted :—

"One-half of the entire consolidated rate imposed upon bustee land and the huts built thereon shall be paid by the occupiers thereof, and the other half by the owners; and the other provisions of this Act as to the payment and recovery of the consolidated rate shall apply to such bustee land and huts;"

and that sections 160 to 162A be omitted.

He said:—"My object is to restore the law such as the law was in 1876. If I can show that the anticipations formed under the law of 1888 have not been fulfilled, and that the law as amended by the Act of 1888 has been attended with serious financial loss to the Corporation, I think, Sir, I shall be entitled to ask this Council to reconsider the judgment which it passed upon this matter in 1888. The two grounds which were urged on that occasion in justification of this change of the law are these. In the first place, the ground of administrative convenience was urged. In the second place, it was stated that it was desirable to keep away the municipal underlings from the poor people who inhabited bustees. Both these grounds deserve consideration.

"I desire to state, in the first place, that administrative convenience is not to be confounded with administrative efficiency. I am free to admit that it is certainly more convenient to draw up 7,000 bills in place of the 70,000 bills which had to be made under the law of 1876. Under the law of 1888 you make only 7,000 bills addressed to the bustee-owners. Under the law of 1876 you had to make 70,000 bills, not addressed to bustee-owners, but to the occupants of those bustees. I am free to admit, as I have already remarked, that, as far as the ground of administrative convenience is concerned, there is much to be said in support of the law of 1888; but, Sir, I hold that administrative convenience in this matter has been attended with serious loss to municipal revenue, and, if I make good that ground, I think I shall have established my case.

"After all, Sir, finance is the touchstone of all administration. If we find that in consequence of any law the receipts in respect of any matter have fallen off, we are bound to change that law; and I think I shall be able to demonstrate almost with mathematical precision that, in consequence of the enactment of this provision in the law of 1888, there has been serious financial loss—a serious diminution of the revenue, unrealizable from bustees. I beg to refer you to a discussion which took place at a meeting of the Bill Committee. The Bill Committee say in a report which they have addressed to this Government :—

"The Corporation has on an average paid to the owners of bustee lands about 1/10th of a lakh of rupees every year for the last nine years by way of compensation."

"That is to say, the landlords collect the rates from the hut-owners, and they get 12 per cent. as a charge for such collection, and this part of the statement refers to that collection. At the same time, the collection of the rate which, before the Act of 1888, was upwards of 90 per cent. of the gross annual demand, without the employment of any coercion, has since then never reached 85 per cent. That this falling off is to a great extent due to the change of law in regard to the payment of bustee rate bills will be amply borne out by the statement of collections set forth in the Proceedings of the 14th Meeting of this Committee. That statement shows that while owners of house-property have, since 1890-91, paid on an average nearly 90 per cent. of their due without any coercion, the average collection of bustee consolidated rate has not exceeded 72.55 per cent., and that while the percentage in the former case, shown by the Joint-Collector, was never less than 90.97 during the last six years, and in one of these years was so high as 93.3, the percentage in the latter case within the same period was never higher than 74.72, and in the year just expired was so low as only 61.85. Before the Act of 1888 the collection of bustee rates was 90 per cent. of the gross annual demand without recourse to my process of coercion. Since the enactment of the law of 1888 it has fallen below 90 per cent., and has never reached 85 per cent.

"I was a member of the Bill Committee, and I attended every meeting of the Committee. We called the Joint-Collector and the Collector to be present at a

meeting of the Committee when this matter was discussed, and we recorded what they said, and we placed on the record also a very important statement which was submitted by the Joint-Collector. I will read an extract from the proceedings of the Committee. Mr. O. C. Dutt said:—

‘He could give no information as to the falling off since the passing of Act II of 1888 in the collections from bustee tenants, because separate accounts were not kept of rates paid by tenants and owners prior to 1889, respectively. They were all included under the head of “house-rate.” The percentage of collections before the amalgamation was higher than after it. There were no separate figures, and, therefore, it was impossible for him to give details. Before the amalgamation the highest percentage of collections of the house-rate was 92 per cent.; after the amalgamation it fell to 85, and that was principally due to the non-realisation of bustee bills. The Act of 1876 afforded greater facilities for the realization of bustee rates.’

“That is the evidence of the Collector, but the evidence of the Joint-Collector, who, I believe, has to deal with a larger number of bustees, is even more conclusive. Let me read to you the evidence and the figures which were adduced by the Joint-Collector. The Joint-Collector (Babu Aghore Nath Mukerjee) said that the collections from bustees had fallen off very much from what it used to be under the old system. Under the former law he collected from 88 to 90 per cent. of bustee bills. I shall ask the indulgence of the Council to allow me to read some of these figures, because they forcibly illustrate the point which I am endeavouring to lay before the Council, namely, that the municipal revenue has suffered distinctly by reason of the change of the law of 1876 and the substitution of the provisions which I beg to challenge. In 1890-91 the owner's share as collected by the Collector was 87·54 of the entire collections and the occupier's share was 83·81 per cent. What was the share realized from the bustee people? Eighty-seven per cent. is the percentage of the owner's share, 83 the percentage of the occupier's share; the percentage represented by the realization of the bustee bills came up to 74 per cent. And, Sir, you find this all along year after year. Let me read the figures in the statement:—

Percentage of collections, owner's and occupier's share and bustee land, from the year 1890-91 to 1897-98.

YEAR.	Nature of rate.	Collector.	Joint-Collector.
1	2	3	4
1890-91 ...	Owner's share ...	87·54	76·96
	Occupier's share ...	83·81	77·20
	Bustee land ...	74·38	62·65
1891-92 ...	Owner's share ...	89·25	79·38
	Occupier's share ...	86·37	80·53
	Bustee land ...	78·40	64·62
1892-93 ...	Owner's share ...	91·60	90·97
	Occupier's share ...	89·83	89·61
	Bustee land ...	79·56	74·72
1893-94 ...	Owner's share ...	91·58	92·79
	Occupier's share ...	89·50	77·42
	Bustee land ...	77·71	70·83
1894-95 ...	Owner's share ...	91·58	92·65
	Occupier's share ...	89·83	86·61
	Bustee land ...	77·82	68·55
1895-96 ...	Owner's share ...	91·58	93·30
	Occupier's share ...	89·56	88·12
	Bustee land ...	79·30	68·58
1896-97 ...	Owner's share ...	92·56	92·99
	Occupier's share ...	90·48	87·99
	Bustee land ...	80·78	63·95
1897-98 ...	Owner's share ...	91·06	91·80
	Occupier's share ...	88·41	91·69
	Bustee land ...	77·15	61·85

"I find Babu Preo Nath Mullick making the following observations in the course of the discussion which took place, and I think it is as well that I should lay them before the Council—

'Babu Preo Nath Mullick remarked that when the new procedure was instituted a memorial was submitted to Government for its reconsideration, and praying that the Bill might be vetoed. That prayer was not acceded to on the ground that the result of the working of the law should be seen. Another application was made four years subsequently, and the reply was that it would be considered with any future proposals for the amendment of the law.'

"Your Honour was pleased to intimate yesterday your approval of the appointment of a Commission to enquire into the question of the assessment of residential houses. I think, Sir, it would not be out of place to extend that enquiry somewhat and include this particular matter to which I have called Your Honour's attention. The people feel a grievance in this respect, the landlords feel a grievance, the tenants feel a grievance; and as I go on, Sir, I hope to be able to point out that the present law is unjust to the landlord and the tenant alike. That being the case, it is right and proper that the Commission should extend its investigation to this particular matter in regard to which there is a serious grievance.

"Let me now approach the consideration of the second ground on which the change of the law was justified in 1888. It was then said that it was desirable to keep the municipal underlings away from the poor people who inhabit the bustees. As a matter of fact, have you succeeded in completely keeping away the municipal underlings from the poor residents of bustees? Even in regard to bustee rate bills, when you are not able to realize them, as you are not able to realize them in the case of minors or of zannan ladies, or of landlords who do not live in town but in the mufassal—in the case of these persons you send your peons with a distress warrant to realize your dues from the inhabitants of these bustees. Therefore you have not been able completely to keep out the municipal underlings from the poor people who inhabit these bustees. Nay, more, you have substituted a worse class of people than the municipal underlings, who are at any rate responsible to somebody. You have substituted unscrupulous agents, in some cases the unscrupulous agents of the unscrupulous zamindar in the place of the responsible agents of the Municipality. The License Officer's peons visit the poor people in the bustees; the Health Officer's peons, the conservancy peons—they all pay their daily visits and pocket their daily perquisites. Do you seriously aggravate the situation if you send one more peon to pay his visit? I have already observed that the law involves injustice to the tenant, injustice to the landlord; and I may say—and it is one of the strongest grounds upon which I put my case—that it involves injustice to the tenants in this way: that unscrupulous landlords and their still more unscrupulous agents sometimes realize from the tenants a great deal more than the dues of the tenants. The tenants do not know what they have to pay. They have little conception of their liabilities, and the result is that these unscrupulous agents approach them and extort from them as much money as they can. Therefore, looking at the matter from this point of view, the Council is bound to hold that the law involves a great injustice to a class of people who ought to be protected by the Government against all acts of injustice and oppression.

"I venture to think it also involves a grave injustice to the landlord. In many cases the tenants will not pay their dues. The landlords have to pay their dues in advance, and these dues are not all realized from the tenants.

"Therefore, Sir, looking at the matter from the point of view of the great injustice that is done to the landlords and tenants alike, looking at the matter from the point of view of the loss to the municipal revenues, it seems to me that a strong case has been made out for the modification of the law upon the lines of the old law of 1876. I await with some anxiety the decision of the Council on this matter."

The Hon'ble Mr. APCAR said:—"I wish to ask the Hon'ble Member what his meaning is. Does he mean that the owner shall pay on the valuation of the hut as well as of the land? As the amendment runs it seems to me that what is asked for is that half of the entire consolidated rate imposed on bustee land and on the hut shall be paid by the owner. The hut does not belong to the owner of the land."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Under the Bill half the consolidated rate has to be paid by the owner and the other half by the occupier."

The Hon'ble Mr. BAKER said:—"I am opposed to this amendment, and I hope to be able to convince the Council, and perhaps even the Hon'ble Member, that the course followed by the Select Committee was an eminently fair, safe and reasonable one."

"To show the grounds on which the arrangement in the present Act was supported, I will read the Council the following extract of paragraphs 46—50 from a memorandum recorded by Sir Henry Harrison in 1890 on this subject:—

'46. The bustee tenure is one in which the landlord allows the tenant to build at his own expense a tiled hut on his land, and to pay him ground-rent for the use thereof. The tenant has no security of tenure, and can be turned out at a month's, if not a moment's notice. Under the old law in Calcutta the landlord had to pay the owner's rates on the land, which was assessed under one number. Each hut on it was separately assessed, the hut-owner paying the occupier's rate on the bit of land occupied by him and the owner's and occupier's rates on his hut. Thus, if a bustee had 20 huts on it and its number was 50, Beadon Street, the huts would be 50H. 1, 50H. 2 50 H. 20, there being in all 21 separate assessments. If in the middle of the year another hut was added, it would become 50H. 21, and the rental of the original number must be modified also. Thus the municipal staff had for this one plot of land this one number to collect 61 separate bills from 21 different persons, 60 of which were recovered direct from the hut-owners. In the Suburbs the case was worse, because there the hut-owners were compelled to pay for the ground-landlord as well, with a right of recovery of the amount from him! I have made careful enquiries, and cannot hear of a single case of such recovery.

'47. Under the new law a single assessment is made of the plot of land belonging to each landlord. To this is attached a schedule of all the huts on the land and of the valuation of each, that both landlord and tenant may know the precise sum recoverable by the former. From these valuations a deduction of 10 per cent. is allowed for repairs, and the landlord is allowed 2 annas in the rupee for collection expenses and other losses. The assessment now made holds good for the year, the landlord getting the benefit of new huts and having to pay the rates of any that are removed. At the end of the year either he or the Municipality may insist on a re-valuation, but, if neither do so, the old valuation may continue from year to year. A single bill is made out against the ground-landlord for each quarter.

'48. The main object of this provision is administrative efficiency and the putting a restraint on the ill-treatment of a class little capable of defending themselves; and it is on this ground that I would most earnestly deprecate any reversion to the old system. At the same time I am quite prepared to defend it on the ground of equity also. It is well known that it has been introduced into England for the very same reason, where it has been the law since 1869. All rates in England, with very rare exceptions, are payable by the occupiers; but by 32 & 33 Vict., cap. 41, it was prescribed that whenever a holding was valued at less than £20 in the Metropolis, £13 in Liverpool, £10 in Birmingham or Manchester, or £8 in any other parish, the parish authorities might rate the owners instead of the occupiers, giving them an allowance of 15 per cent. The object of this is precisely the same as that of the present Act, viz., to keep the collecting establishment of the Municipality away from the very poor and defenceless. If needed in England, it is needed ten times more in Calcutta, where this is the class habitually most oppressed and most silent under oppression. Under the old law the number of warrants issued in Calcutta annually was between 30,000 and 40,000, the great bulk of course in connection with these poorer rate-payers,—100 warrants a day, yet who heard anything of them! Under the new system a single warrant has been issued against a wealthy ground-landlord, who, with ample means, was openly defying the law, and the whole of Calcutta rings with the event, and a suit in the High Court is the result. Is any comment necessary on such a contrast?

'49. It may be said, however, that as the hut-owners will have to deal with the landlords' agents, they will be worse off than if they had to deal with the municipal

underlings; but this is an untenable objection. The hut-owners must, under any circumstances, be brought into contact with the ground-landlord's collecting sarkar. If he is unprincipled, he can worry the tenants in the collection of rent quite as much as in the collection of rates. Moreover, if the new law is retained, it may be anticipated with confidence that in a very short time the rates will be included in the rent. The landlord will say: "I will pay your rates; you pay me Re. 1-12 instead of Re. 1-8 a cottah ground-rent," as they frequently already do in the matter of tenanted houses. When this is brought about, the object of the new legislation will be fully attained. I have no doubt that, if the Government will only support this provision of the new Act, the benefits resulting from it, in a few years, will be most conspicuous. As a very experienced officer of the Corporation said to me the other day, you may almost close the Warrant Department.

'50. But it is urged that the provision is essentially unjust to the ground-landlord, and therefore, however beneficial the results may be, justice ought not to be sacrificed to them. And the distinction pointed out by Sir Charles Paul is approvingly quoted, that in England the owner is made liable for his own property, but in Calcutta he is made liable for the rates of the huts of which he is not the owner. I have the greatest possible respect for Sir Charles Paul's opinion, and he rendered most valuable assistance in carrying through the assessment clauses of the new Act; but in this instance I must be allowed to adhere to my own judgment. The bustee-owner is the sole and only proprietor of the holding. He has surrendered nothing of his proprietary rights—not even a six months' tenancy. To call the hut-owner who can be expelled at a moment's notice an owner, is surely a euphemism. He owns nothing but the bamboos and tiles of his hut. The ground-landlord invests no capital in the bustee (except perhaps for drainage), he risks nothing, he ventures nothing, and he appropriates all the profits of the municipal improvements! The value of bustee land since the bustees have been improved by the Corporation have had roads made through them, bathing-platforms erected in them, and their conservancy attended to, has gone up from 50 to 300 per cent. At a most moderate computation the ground-rents of bustees in Calcutta have increased by five lakhs annually during the last six or seven years. The landlords have literally grown rich in their sleep. And can they, forsooth, complain of injustice at the hands of the Corporation, because for the well-being of the community they are required, as in England, to advance the rates for poor tenants?

"Now, Sir, in so far as the reduction in clerical labour is concerned, Sir Henry Harrison's arguments are as valid and powerful to-day as they were ten years ago. The collector of municipal taxes reported to the Corporation last year that, if bustee rates were to be collected direct from the tenants, the number of quarterly bustee bills would be multiplied by 10. Instead of issuing 7,000 bills each quarter, they would have to issue 70,000! All this enormous labour and expense are being saved to the Corporation. And, again, the bustee tenants themselves have gained the full advantage anticipated by Sir Henry Harrison in being freed from the visits of the municipal tax-gatherers and underlings. This was a matter on which Sir Henry Harrison laid great stress, and the importance of which will be readily appreciated by any one who knows much of the *bustee-wallahs*, how poor they are, how illiterate, and how little able to protect themselves. These great and unquestioned benefits—benefits alike to the Corporation and to the tenants—ought on no account to be surrendered lightly or without convincing proof that we are paying too high a price for them.

"But in another respect it must be admitted that Sir Henry Harrison's anticipations have not been realized. He hoped that by making the bustee-owner responsible for the bustee-rates the collection of these rates would be greatly facilitated; that payments would be recovered from the landlords with ease, and that it might almost become possible to close the Warrant Department. Now, whatever the cause may be, it is clear that these fair promises have not been fulfilled. I will not go over again the figures which the Hon'ble Member has laid before the Council. To some extent they do not give quite an accurate description of what has happened. But, without scrutinising them too closely, I am prepared to admit that, at all events in the suburban bustees, the percentage of collections is very poor: it is lower than it was under the former law, and is not perceptibly improving.

"This state of things is, I admit, a reason for considering our position, and the next step would naturally be to enquire what are the causes of the disappointing collections. And it is just at this point that the arguments for the amendment are defective. I have read carefully the remarks of the Bill Committee on this matter, and I have listened attentively to what the Hon'ble

Member has said to-day. But in neither the one nor the other can I find any kind of attempt to show that the bad collections are due to the change in the law. Both the Corporation and the Hon'ble Member content themselves with showing that the collections have been poor; and they both assume that this is due to the change in the law. It is a case with them of *post hoc propter hoc*. But, Sir, it is quite unsafe to make any such assumption. We must have some definite evidence to go upon before we abandon the present system as a failure, and revert to the older law. There are other causes, besides the change in the law, which have been in operation since 1888. It is notorious that the Warrant Department, till recently, has been utterly inefficient and most probably corrupt, and it is the opinion of the Vice-Chairman, a very competent officer, that this is one of the main causes of the bad collections. Again, it frequently happens that the owner of a bustee does not live within it, but has his residence elsewhere. The effect of this is that the Chairman has no power to cut off the water-supply from the bustee-owner's own house for failure to pay rates. This power is one of the most efficacious modes of enforcing payment of rates that the Chairman possesses, and it is obvious that the want of such a power in the case of most bustees must have affected the collection of bustee-rates.

"I am not prepared to say positively that the bad collections are wholly due to these two causes. The truth is that there is something wrong in the collection of bustee bills, and neither the Corporation nor any one else has yet succeeded in getting to the bottom of it.

"In these circumstances, it seemed that the safest course was to provide an alternative procedure for bustees, and to this the Hon'ble Member has made no allusion whatever. What we have done is to retain the system of the Act of 1888, and simultaneously to provide that the Chairman and the General Committee should have power to withdraw any bustee from it and place it under the operation of the old system which is advocated by the Hon'ble Member. This course commended itself to the Select Committee, who made the necessary provision by inserting section 162A in the Bill. I venture to think that this course is eminently wise, safe and judicious, and I trust that it will commend itself to the Council, if the Hon'ble Mover elects to press his amendment.

"Once the dual system is given a trial, and both systems are worked side by side for some years, we shall be in a position to see whether the falling off in the collection of bustee rates is due to the alteration made by the law of 1898. Until that is established by experience it will be most unsafe to assume that the law of 1888 is in fault."

The Hon'ble Mr. OLDHAM said:—"While my hon'ble friend the mover of the amendment read out his long list of figures for eight years, I could not help reflecting how seriously they took away from the declaration which I made in this Council, that I did not join in the indictment against the Corporation, because I think those figures in themselves form a formidable indictment against the Commissioners. There is scarcely a Member of this Council who has not had practical experience of the collection of rents, and who cannot realize what those figures mean. Bustee-owners are rich: bustee-inhabitants are poor. Your bustee law is changed and the procedure is converted from collecting from 70,000 bustee-inhabitants, who are poor, into collecting from 7,000 bustee-owners, who are well to do. Nevertheless the collections become less, and in one year sank so low as 60 per cent. There can be only one reason for this."

The Hon'ble Mr. BOLTON said:—"It occurred to me during the speech of the Hon'ble Mover of the amendment that a compromise might be effected by allowing for bustees the special procedure of collecting the rates to which objection has been taken, or the ordinary procedure applicable to the rest of the town, the option of using either being left to the Chairman. I am glad to

find that provision has been made for this alternative procedure in the Bill. It seems to me, therefore, that the Bill meets adequately the object of the amendment. After experience of the working of the two procedures, it will be possible to decide finally which procedure is the more suitable for bustees, and should be generally or exclusively followed."

The Hon'ble RAJA RANAJIT SINHA, BAHADUR, OF NASHIPUR, said:—"I support the amendment on the ground that it is a matter of great injustice to the owners of bustees to be called upon to pay also the occupier's share of the municipal rates. There will be no loss to the Municipality if the rates are levied directly from bustee-tenants. The Municipality has ample power to realise its dues, whereas it is very difficult for private parties to do so, for they must have recourse to law, and the owners therefore are losers by having to pay their tenants' rates and recover them afterwards by process of law, as all the expenses incurred in litigation cannot be recovered."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I must admit that it was an omission on my part not to refer to the provision in this Bill which empowers the Chairman, with the sanction of the General Committee, to exempt any bustee from the provisions for the recovery of bustee-rates. I acknowledge that that is a distinct improvement in the Bill, and its introduction very clearly shows that the Select Committee felt that the bustee provisions of the Act of 1888 have not worked well. I have only to express the hope that the Chairman of the Corporation will see fit to freely make use of this alternative procedure. I can only wish that the initiative in the exemption of bustee-owners from the ordinary bustee procedure was given to the Corporation; for, as the Corporation represents the people and comes freely into contact with them, the Corporation would be in a position to administer this part of the law with much greater success than the Chairman and the General Committee; and I appeal to the Hon'ble Member in charge of the Bill to consider this point. The new provision to which my hon'ble friend has referred, I thankfully admit, is a distinct improvement. In the course of the observations which the Hon'ble Member made he was pleased to remark that there had been deterioration in the collection of bustee-rates, but that it was difficult to ascertain the cause, and that it was possibly due to the inefficiency of the Warrant Department and possibly to the defect in the law which did not empower the Corporation to cut off water-connections. But with equal justice and show of reason I might assume that it was possibly due to a defect in the law, and I believe that is the opinion of all experienced Commissioners. It is their deliberate opinion that it is the defect in the law which is responsible for the deterioration in bustee-collections. My hon'ble friend observed—and here again the observation supports my contention—that the landlords under the operation of this law will be disposed to exact higher rates from their tenants than they pay to the Corporation on their account. Is not that a grave injustice to the tenants? The poor people don't know what rates they have to pay; they are absolutely at the mercy of their landlords. I certainly think that involves very great hardship upon the poor."

The Hon'ble MR. BAKER said:—"We made provision for that in the Select Committee; notices are to be posted within the bustee of the valuations which have been made."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The rates payable by each tenant must be calculated upon the valuations which have been made: will these poor people be able to make the calculations? I say they will be completely at the mercy of their landlords. The most simple and most effective way would be to go straight to these poor people and present a bill to them, instead of leaving the landlord to collect the rates from them. It is obvious that the present law does involve injustice, and, notwithstanding what Sir Henry Harrison has said, I ask the Council to reverse his judgment and to re-enact the law of 1876."

The motion being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutoah Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Delawar
Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendments were lost.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the word "five" be substituted for the word "ten" in line 3 of clause (c) of section 159 (now 180).

He said:—"I am not aware that the Hon'ble Member in charge of the Bill has any serious objection to this amendment."

The Hon'ble MR. BAKER said:—"The Hon'ble Member has treated this amendment as an alternative to his previous motion, which has just been negatived."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"It is not an alternative."

The Hon'ble MR. BAKER said:—"Ten years is the term in the present Act, and I don't think it ought to be reduced without any special reason. I have consulted the Chairman of the Corporation, and he thinks it would be dangerous to accept this amendment. If you exclude from the operation of the bustee law any masonry building in a bustee built on land let for a term of five years, there would be a risk of excluding many more buildings than we anticipate. Landlords may object to give leases of ten years, but they might give leases of five years and one day. For this reason I am not in favour of this amendment."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"Mr. Bright's opinion ought to carry great weight, but I think the opinion of experienced Commissioners is entitled to some little consideration also. Bustee-owners seriously object to allow people to build masonry buildings in their bustees, and if they allow them to construct masonry buildings and give them leases for five years for the erection of such buildings, such buildings ought to be considered as being exempt from the operation of the bustee law. I understand the *raison d'être* to be this, that the bustee procedure is to be retained where the landlord can be found and you can realize the rates from him. Tenants remove from place to place, but, if a tenant has built a house in any particular bustee on a lease of five years, he ought to be treated as a sort of permanent resident; he has not the same sort of fleeting interest as a bustee-tenant has, and therefore a person building a pukka house on bustee-land having a lease of five years ought to be exempt from the operation of the bustee procedure.

"The Hon'ble Member in charge of the Bill referred to Mr. Bright's opinion; but has Mr. Bright given any facts to show that there will be any loss of revenue or any administrative difficulty? It is his mere *obiter dictum*, but I think that the opinions of experienced Commissioners whom we have consulted should also be entitled to some weight. And further there is that ground which I have submitted, namely, that a person having a lease for five years who builds a masonry house on the bustee-land should be considered a permanent resident."

The Hon'ble MR. BAKER said:—"I am not prepared with any facts or figures, because I had not the smallest idea that anybody would question Mr. Bright's statement, and there is nothing in support of this amendment in the report of the Corporation or in any of the papers on the Bill."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I raised the question in the Select Committee."

The motion was then put and lost.

SECTION 187.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 164A (now 187), sub-section (2), lines 4 and 5, the words "shall be repaid or refunded to the objector or allowed to be set off against any present or future demand of the Corporation against him under the provisions of this Act" be substituted for the words "shall be repaid or allowed."

The motion was put and agreed to.

The Council was then adjourned to Wednesday, the 20th September, 1899.

CALCUTTA;

The 16th January, 1900. }

F. G. WIGLEY,

Asst. Secy. to the Govt. of Bengal,
Legislative Dept.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Wednesday, the 20th
September, 1899.

Present:

The Hon'ble SIR JOHN WOODBURN, K.C.S.I., Lieutenant-Governor of Bengal,
presiding.

The Hon'ble MR. W. B. OLDHAM, C.I.E.

The Hon'ble MR. R. B. BUCKLEY.

The Hon'ble MR. C. W. BOLTON, C.S.I.

The Hon'ble MR. E. N. BAKER.

The Hon'ble RAI DURGA GATI BANERJEA, RAHADUR, C.I.E.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. F. F. HANDLEY.

The Hon'ble MR. F. A. SLACK.

The Hon'ble KHAN BAHADUR MAULVI DELAWAR HOSAIN AHMED.

The Hon'ble BABU JATRA MOHAN SEN.

The Hon'ble MR. T. W. SPINK.

The Hon'ble RAJA RANAJIT SINHA, BAHADUR, OF NASHPIUR.

The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH, C.I.E.

The Hon'ble MR. D. F. MACKENZIE.

The Hon'ble MR. J. G. APCAR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BOIKANTA NATH SEN.

The Hon'ble BABU SURENDRANATH BANERJEE.

THE CALCUTTA MUNICIPAL BILL.

SECTION 189.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 184 (*now* 189), the words "in advance" be omitted.

He said:—"This is merely a verbal change, and I was not a little surprised to hear from one of my Hon'ble friends this morning that he had taken it to be a very substantial change. It is really nothing of the kind. Section 184 (*now* 189) provides that 'the tax shall be payable half-yearly in advance.' Section 185 (*now* 191) fixes the date on which the sum is to be paid, and it seems to me that, if the amount due for the half-year commencing on the first day of April may be paid on the 30th of April, it is not a very correct description to say that the tax is payable half-yearly in advance. It will be quite open for the rate-payer to pay the tax at least thirty days after the half-year has begun, and therefore I think the words 'in advance' may be omitted."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I want to say just one word in reference to my hon'ble friend's amendment. You have got those words in the law, and, if you omit them, people will come to the conclusion that the taxes are not to be paid in advance. They will say: 'The Legislature has not insisted upon our paying in advance, and why should we do so?' I think it is most essential that the words should be retained. When people are called upon to pay in advance, they pay during the half-year or during the quarter. When they are called upon to pay in arrears, they pay very much later and sometimes don't pay at all; and, having regard to the fact that the omission of these words is likely to lead to misapprehension—my friend shakes his head; he is a sound and an able lawyer, but we are not all lawyers, and people will take a common-sense view of the law and will say that they are not required to pay in advance; they therefore will not do so, but pay in arrears. Taking a common-sense view of the matter, I decidedly think that the words ought to be retained."

The Hon'ble MR. BAKER said:—"I agree with the Hon'ble Babu Surendranath Banerjee's view. I think that to omit these words would cause misapprehension in the minds of the public. There is no doubt this tax ought to be paid in advance, and that intention is made perfectly clear by the use of these words."

The Hon'ble BABU BOIKANTA NATH SEN said:—"From a lawyer's point of view section 184 (*now* 189) is the substantive law, and section 185 (*now* 191) is only the adjective law; therefore, in my opinion, the words should be allowed to remain."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"It seems to me, Sir, that we are not very consistent. If under section 149 (*now* 171) there is no misapprehension, I do not see that there can be any possible misapprehension here. I think that, by omitting the words 'in advance,' we might bring the two sections into harmony."

The motion was then put and lost.

SECTION 198.

The Hon'ble BABU SURENDRANATH BANERJEE moved that, for the words "in his discretion" in lines 1 and 2 of the proviso to section 206 (*now* 198), the words "with the previous sanction of the General Committee" be substituted.

He said:—"Sir, I will explain what I mean. The proviso gives to the Chairman the power of refunding licenses under certain conditions. I suggest that the power should be exercised subject to the approval of the General Committee. If my hon'ble friend objects to that, I would say that the power

The sections of the Bill having, under the direction of the Council, been re-numbered, the present number of each section is inserted in brackets, wherever the new numbering differs from the old.

should be exercised subject to an appeal to the General Committee. These are delicate matters, and all of us have our likes and dislikes, and the personal element ought to be eliminated as far as possible. It seems to me that it would be wiser in a matter like this that there should be some sort of control exercised by the General Committee. Of course we know that the Chairman will do his duty. I have not the slightest desire to suggest that he would do anything else but his duty. It is, however, advisable that there should be a safeguard against the play of personal feelings, and it was this idea which suggested to me the idea of recommending this amendment."

The Hon'ble MR. BAKER said:—"If the Hon'ble Member will omit the word 'previous,' I am quite ready to accept his amendment."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Yes, I am quite ready to omit the word 'previous'."

The Hon'ble MR. MACKENZIE said:—"I should be against this on the ground that applications might be made to the Chairman individually by persons who might not care to make applications to the General Committee. That is to say, disclosures might be made about business in a private way to the Chairman, which the applicant would prefer not to make to the General Committee."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I think that objection is met by the omission of the word 'previous'."

The Hon'ble MR. BAKER said:—"I was going to say the same thing. The matter in that case would be subject to the control of the General Committee. The General Committee will have power, under the amendment I moved the other day, to insert a new section, section 24A (now 16), to look into and revise the Chairman's orders upon any particular case. But they may, and doubtless will, authorize the Chairman to anticipate their approval, and in that case a mere subsequent report will be sufficient. In that case I think it will probably be found that, in the class of cases to which the Hon'ble Member refers, it will not be necessary for the General Committee to have all the facts before them; a mere report will be sufficient."

The Hon'ble MR. MACKENZIE said:—"Yes, I accept that."

The Hon'ble MR. APCAR said:—"I don't quite follow how this section would be worked. Is it intended that there shall be an appeal to the General Committee?"

The Hon'ble MR. BAKER said:—"No; the action would be subject to their sanction."

The Hon'ble MR. APCAR said:—"I understand there will be something like three or four thousand cases coming up in regard to this matter, and, if these are all to come up before the General Committee, they will constitute an enormous burden in addition to the other work of the General Committee."

The Hon'ble MR. BAKER said:—"I think, Sir, it is desirable to give some power to the General Committee in this matter. If the Hon'ble Mr. Aparcar will look at clause (c), he will see it is there provided that the Chairman may, in any other case, exempt any person from liability to take out a license, or may authorize him to take out a license in a lower class. That is rather a large power of discretion to give to the Chairman alone. Therefore, I welcome this amendment."

The Hon'ble MR. APCAR said:—"It must not be understood that I am opposed to an appeal to the General Committee. I only wish to draw attention to the actual facts, in order that they may be before the Council in the discussion on this matter. That these cases should come up to the General Committee I think is a very necessary provision. I would not like to give absolute

powers in any such matters to any one individual. But, if they all are to be brought up before the General Committee in the ordinary routine of work, I would draw attention to the very heavy additional burden which would, in that case, devolve upon the General Committee."

The Hon'ble THE PRESIDENT said:—"They are subject to the control of the General Committee."

The Hon'ble MR. BAKER said:—"Under my amendment carried the other day, the General Committee will have the power to authorise the Chairman to anticipate their sanction in any class of cases they think proper. These matters, although very numerous, will simply come up, I think, in a routine way as a matter of report. It will not materially add to the work of the General Committee, and I think the Hon'ble Babu Surendranath Banerjee and the Hon'ble Mr. Apcar himself will bear me out in this with their experience of the working of the Corporation."

The Hon'ble MR. BOLTON said:—"I am disposed to think, Sir, that the best course would be to provide that the Chairman shall furnish brief particulars of all the cases to the General Committee, with the reasons for his action. The General Committee then might or might not, as they think proper, call on him for an explanation in particular cases. To subject all these cases to the orders of the General Committee seems to me to be very unnecessary."

The Hon'ble MR. BAKER said:—"That, Sir, is really met by the amendment carried the other day. The effect of that amendment would be to permit the General Committee to lay down rules that in cases of this kind or in similar classes of cases the matter has only to be reported to them afterwards. That was the express object with which that amendment was brought forward. It meets the whole point raised by the Hon'ble Mr. Bolton."

The motion was then put and the amendment was agreed to in the altered form.

SECTION 203.

The Hon'ble BABU SURENDRANATH BANERJEE moved that after the word "rates" in line 8 of section 211 (*now* 203) the following words be inserted:—

"or, where no rates are mentioned, at such rates."

He said:—"The object of this amendment is to provide that the municipal revenue does not suffer any loss, and I think my hon'ble friend will agree with me when I have stated the facts of the case. May I ask the Council kindly to turn to Schedule VIA (*now* IX). The Council will find that this is a schedule which deals with the 'scavenging tax,' and, Sir, the amendment of which I have given notice deals with the rectification of an omission in connection with this schedule. Owners of bazars and markets pay this scavenging tax at the present moment, and a very considerable share of the tax is derived from them. I have ascertained from the Municipal Office that the amount of the tax to be paid by the owners of markets and bazars cannot be laid down in any workable and practical shape. I think it would be best settled by bye-laws. Therefore, Sir, I say that the rates are to be the rates such as are fixed in the schedule or, where no rates are fixed in the schedule, such rates as have been prescribed by bye-laws made under this Act. The object is to improve the municipal revenue, or at any rate to see that the municipal revenue now obtained is not lessened by any law which we may now pass. I think my hon'ble friend has himself given notice of a similar amendment. Owners of markets and bazars pay the scavenging tax, and there is no reason why they should not continue to pay it. If you cannot lay it down in the schedule, it must be determined by bye-laws or by private arrangement. The present practice is for these rates to be determined by private arrangement."

The Hon'ble MR. BAKER said:—"The intention of the section is exactly the intention of my hon'ble friend. In the first instance, the rates to be paid by these people are to be the rates specified in the schedule; if there are no

rates specified in the schedule against any particular case, then they come under the operation of rates to be prescribed by bye-laws. The addition of these words will make no difference either way. I have asked the Secretary of the Council, and he says the addition of these words will have no effect on the meaning of the section as it stands at present."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have consulted some friends, and they are of opinion that there has been an omission."

The Hon'ble MR. BAKER said:—"Does the Hon'ble Dr. Asutosh Mukhopadhyaya think the words ought to be inserted?"

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"The proposed addition is wholly unnecessary. The section is quite clear as it stands."

The Hon'ble MR. BAKER said:—"The learned Doctor agrees with the Secretary."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The lawyers of the Council think it is not necessary, and I defer to their opinion. I am not entitled to hold my opinion against theirs in matters of this description, and I therefore withdraw my amendment."

The motion was then, by leave of Council, withdrawn.

NEW CHAPTER.

The Hon'ble THE PRESIDENT said:—"With reference to a new amendment of which notice has been given by the Hon'ble Babu Surendranath Banerjee, although I do not wish to enter in any way into the merits of the proposition or to offer any comments upon it at the present moment, I think the Hon'ble Member will himself see that the Council cannot adopt a proposal of the kind without reference to the commercial bodies which are interested in it. He must be aware also that a system of taxation like this cannot be enforced without penalties, for which we must get the approval of the Government of India, and therefore, without any expression of opinion as to the merits or the demerits of a system of town-dues, I regret I cannot admit this amendment at this stage."

The Hon'ble THE PRESIDENT ruled the following motion, standing in the name of the Hon'ble Babu Surendranath Banerjee, to be out of order:—

That the following sections be inserted in the Bill:—

CHAPTER XVIA.—TOWN-DUTY.

"216A. (1) With the previous sanction of the Local Government, the Corporation may, by resolution adopted at a special meeting, by a majority of not less than two-thirds of the members present at such meeting, impose a town-duty and make rules for the levying of such town-duty on such articles as the Corporation may from year to year determine, when the said articles are imported from any place into Calcutta. [Hem. Act. 192.]

(2) The said duty shall not exceed 2½ per cent. of the market value of each article.

"216B. The General Committee shall cause tables of the town-duties for the time being leviable, specifying the rates at which and the articles on which the same are leviable, to be printed in the English, Bengali, Hindi and Urdu languages, and to be affixed in a conspicuous position at every place at which the said town-duties are levied. [Hem. Act. 192.]

"216C. (1) No town-duty shall be leviable on any article which, at the time of its importation, is certified by an officer empowered by the Local Government in this behalf to be the property of the Government. [Hem. Act. 191.]

(2) If any article on which town-duty is paid is imported under a written declaration, signed by the importer, that such article is being imported for the purpose of fulfilling a specified contract with the Government or otherwise for the use of the Government, the full amount of the duty paid thereon shall be refunded, on production at any time within six months after importation, of a certificate signed by an officer empowered by the Local Government in this behalf and certifying that the article so imported has become the property of the Government.

Refund of town-duty
on export.

"216D. (1) When any article upon which town-duty has been paid is exported from Calcutta, the full amount of the duty so paid shall, subject to the provisions hereinafter contained, be refunded. [Bom. Act, 196.]

(2) Such refunds shall be made under such rules as the General Committee, with the approval of the Corporation, may make in this behalf.

(3) Provided as follows:—

- (a) no refund shall be made unless the same is applied for within one month from the date of exportation;
- (b) no refund shall be made of any amount less than five rupees;
- (c) no rule framed by the General Committee under this section shall have effect unless and until it is approved by the Corporation and confirmed by the Local Government."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I bow to that decision, Sir. May I be permitted to say just one word by way of explanation. I found on going through the report of the Building Commission that they made a strong recommendation in favour of a system of town-duties. They say that the 'imposition of an octroi-duty ought to be taken into serious consideration.' In Bombay, Madras and the North-West Provinces octrois are in force, and it struck me that if we had an octroi here it would be an excellent means of raising revenue. The mercantile community who are going to have a predominant share in the municipal system of the future would also, as I think they justly should, in a system of octroi-duties, have to pay a predominant share of the rates and taxes. That was my reason for making the proposal."

The Hon'ble the President said:—"That may be so, but we cannot go into the matter now."

SECTION 211.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220 (now 211), sub-section (2), before the word "Magistrate," the words "Presidency or Municipal" be inserted.

He said:—"The sub-section says 'if any cart or animals so seized be not claimed within ten days, it or they may be sold at auction by order of a Magistrate.' The Magistrate of what place? Take the city of Calcutta. We have the Presidency Magistrates in the city proper, in the suburbs we have the Suburban Magistrates, and the Bill contemplates that we should create another class of Magistrates to be called Municipal Magistrates. The question may arise which of these Magistrates has jurisdiction in this matter; to this my amendment affords a simple solution."

The Hon'ble MR. BAKER said:—"I think there is some misapprehension about this. The intention of course is that these carts shall be sold under the order of any Magistrate having jurisdiction in the place where the offence is committed. It might be in Howrah. If the Hon'ble Member looks at section 217 (now 208), he will find that this applies to Howrah as well as to Calcutta. It also applies to the Suburbs and the added area, which are within the magisterial jurisdiction of the Police Courts at Alipore and Sealdah. The word 'Magistrate' cannot be qualified as proposed in the amendment."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Then I would suggest that the following words should be put in, 'the order of the Magistrate having jurisdiction in the place.'"

The Hon'ble MR. BAKER said:—"If the learned Legal Remembrancer thinks that an improvement, I have no objection; but I would rather have no change."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If you look at the present law you will find the word 'Magistrate,' and I don't know if any inconvenience has resulted or any harm has been occasioned by it. I think it is unnecessary to make any change."

The Hon'ble MR. BOLTON said :— " It seems to me quite unnecessary to make any change in the section. The Magistrate would obviously be one having jurisdiction within the town."

The Hon'ble MR. HANDLEY said :— " I think, Sir, as the Assistant Secretary has said, that if you make a change here you will have to make changes in about thirty or forty other places in the Bill. If the words were put in, it would make it clear, but if the Magistrate has no jurisdiction he cannot do anything."

The motion was then, by leave of the Council, withdrawn.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220 (*now* 211), sub-section (3), for " twenty days " be substituted " three months."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 220 (*now* 211), sub-section (3), for the words " paid to the credit of the Municipal Funds " be substituted " the property of the Corporation."

He said :— " I think, Sir, it will be convenient if I take these two amendments together. The intention of the amendments is to bring this section into harmony with section 220K (*now* 221). I cannot persuade myself to believe that it was ever intended that the Corporation should keep a separate account of the proceeds of these sales for ever, and that it should be open to a man to come in after the lapse of any length of time and demand his money. I suggest that, if he does not come within three months to claim the money, it should lapse to the Corporation."

The Hon'ble MR. BAKER said :— " As regards the first amendment the Hon'ble Member proposes to extend the term of twenty days to three months. I would point out that ' twenty days ' is the existing law, and that there is no good reason for the change. I have never heard that any inconvenience has resulted from its operation.

" As regards the second amendment, I would point out that there is a difference between sections 220 (*now* 211) and 220K (*now* 221). Under section 220 (*now* 211), the sale is made by order of the Magistrate, and the sale proceeds in the first instance remain in his hands. At the end of twenty days, if they are not claimed, the Magistrate must pay them over to credit of the Municipal Fund. But in section 220K (*now* 221), the position is different. There, the sale is made by the Chairman, and the sale proceeds are in his hands. They are credited at once to the proper Municipal Fund, and if there is no claim within three years they become the property of the Corporation. But no actual payment has to be made; it is only a book transaction."

The motions were severally put and lost.

SECTION 213.

The Hon'ble BABU JATRA MOHAN SEN moved that in section 220B (*now* 213), sub-section (3), line 1, the word " one " be omitted.

He said :— " Sir, the amendment that I beg to propose is merely a verbal one. Sub-section (3) of section 220B (*now* 213) runs thus :—

' If any one person is liable for the consolidated rate on account of more properties than one, the Chairman may charge to him in one or several bills as the Chairman may think fit the several sums payable by him on account of such properties.'

" I propose we should omit the word ' one ' and make the section read ' If any person is liable,' &c. The reason why I propose this amendment is that in the General Clauses Act the words signifying a singular number include the plural number, unless the text signifies something different. If this word were left in here, there would be confusion, and it might be contended that this word ' person ' does not include several persons in cases where several persons are jointly assessed with the consolidated rate. I therefore thought that the omission of the word ' one ' would make the section clear."

The Hon'ble MR. BAKER said :— " I accept this amendment."

The motion was put and agreed to.

SECTION 217.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220F (now 217) after the word "Chairman" be added "to be recorded in writing."

He said:—"I take it, the intention is that the order made by the Chairman should be in writing."

The Hon'ble MR. BAKER said:—"I have no objection to this, Sir. I would only suggest that the word 'written' be substituted for 'special'."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I want the word 'special,' Sir, and I may tell you why I want it. In a serious matter like this, the order ought to be a 'special' order. I was always under the impression that the word 'special' covered the proposal of my hon'ble friend. You cannot give a 'special' order surely, except in writing. I have had to administer matters of this description in connection with a mufassal Municipality over which I have the honour to preside. We record a written order, and we put down the name of the officer entrusted with the carrying out of the order. That is the rule. The mere passing of that order suffices: the people know of the existence of the order, and they at once pay up the money. That is the mufassal practice, and it works very well. If you have a 'special' order and then accept my Hon'ble friend's modification, I have nothing to say, but I think the word 'special' covers what my Hon'ble friend proposes. I should certainly be exceedingly unwilling to dispense with the safeguard which the word 'special' provides."

The Hon'ble MR. BAKER said:—"If the Hon'ble Member attaches any importance to it I have no objection."

The motion was then put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220F (now 217), after the word "building" in line 5, be added "on the holding in respect of which default has been made."

He said:—"This, Sir, I must confess, is not a simple matter like my last amendment. It is a substantial thing, and I would respectfully ask the Council to consider it carefully. Under the section as it stands in the Bill, it would be quite open to the Chairman to order that the doors of the house of any person be broken open for purposes of distraint, if the Chairman is satisfied that there is reasonable ground for believing that the building contains property belonging to a person who has defaulted. That this is so is clear from section 220D (now 215). That section provides that the moveable property of the defaulter may be distrained wherever it may be found, that is to say, if the property of A, who has defaulted, is in my house, it may be distrained. The law goes to that extent in section 220D (now 215) and so far it has my entire approval. What I object to is that the law should be carried further so as to authorize the Chairman to break open, for purposes of such distraint, the doors of a house which does not belong to the defaulter. I am not sure that this is intended to be the law; but, if it is, I must say that a provision like this may lead to grave abuses, and enable irresponsible municipal underlings to oppress innocent people. I can well anticipate the objection that a similar provision finds a place in the Bengal Municipal Act. That I cannot admit to be a valid defence; at any rate, I hope that such an argument will carry no weight with my hon'ble friend Babu Surendranath Banerjee, who on a former occasion, when I referred to the Bengal Municipal Act, entered a vigorous protest against what he described as dragging down the Calcutta Corporation to the level of the mufassal municipalities."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"May I say one word as to the danger of accepting my hon'ble friend's amendment? The danger is this. Property belonging to a defaulter may be secreted in the house of somebody else, and would be so secreted, because he would know that it would be perfectly safe. The section as it stands is the mufassal law, and I may also

add that the mufassal law in its practical operation has not been attended with any difficulties at all. We are an exceedingly law-abiding people in the mufassal, and, the moment we find our doors are likely to be broken open, we pay up. I think we ought to have this power of moral coercion which is provided for in the section."

The Hon'ble Mr. BAKER said :—" This section was added at the express instance of the Corporation. The amendment as it stands would not only prevent the Corporation from breaking open the houses of any person not a defaulter, but it would also prevent them breaking open a house belonging to the defaulter into which he had removed and secreted property from the holding in default. It would tend entirely to defeat the object of the section."

The Hon'ble BABU BOIKANTA NATH SEN said :—" This amendment may involve the abuse of authority by the officer charged with the execution of the warrant. On the one hand, a man can safely remove his property and thus avoid the execution of the warrant. There is no fear of prosecution against him. On the other hand, the officer would be liable to prosecution. He would certainly be liable to civil damages, but he might be under certain circumstances liable to criminal prosecution; so this is a safeguard against that. I had the honour to preside over a municipality for about nine years, and I never had a complaint against an officer entrusted with warrants for execution."

The motion was then put and lost.

SECTION 221.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220K (now 221), sub-section (3), after the word "shall" be inserted "directly or indirectly."

He said :—" I take this to be the real intention of the law."

The Hon'ble Mr. BAKER said :—" I entirely agree with the Hon'ble Member and accept the amendment."

The motion was put and agreed to.

SECTION 222.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220L (now 222), sub-section (4), for the words "next and following payments of his rent" be substituted "rent for the period for which the arrear of consolidated rate was due or the rent of any subsequent period."

He said :—" This is, to some extent, a paraphrase of the language used in the section, and intended to exclude one case in which a dishonest tenant may take advantage of its beneficent provisions. I will illustrate what I mean by a concrete case. A landlord pays regularly the rates due to the Corporation (say) for the years 1896, 1897, 1898. The tenant has been withholding his rent for these years, and as a consequence the landlord breaks down and fails to pay the rates for 1899. The Corporation then issues notices on the tenant, who is thus obliged to pay the rates for 1899. Now, when the tenant pays the landlord the arrears of rent for 1896, he would be entitled to deduct, under the section as it stands in the Bill, the amount of rates he has paid for 1899. This is obviously unjust. He ought not to have this right of set-off till he comes to pay the rents for 1899. If he is himself in arrears, he is not entitled to any consideration; this is the simple equitable principle upon which my amendment is based."

The Hon'ble Mr. BAKER said :—" I accept the amendment."

The motion was put and agreed to.

SECTION 225.

The Hon'ble BABU JATRA MOHAN SEN moved that, in the last line of section 220-O (now 225), the words "damage that they may be legally entitled to" be substituted for "special damage sustained by them."

He said:—"This section gives protection to municipal servants. The general law says that if material irregularities are committed in respect of any warrants or other processes the party thwarting the warrant is not punishable under the criminal law. Here in this Municipal Bill we have given power to municipal officers to enter buildings and premises from sunset to sunrise, whereas in ordinary cases the Court officers are not entitled to enter premises during those hours. In the discussion on section 220F (now 217), it was suggested as a safeguard that if an officer entered the house of a third person for the purpose of distress during unauthorised hours he is liable for damages. I think if the word 'special' be allowed to remain in this section it may be contended that actual damage occasioned by the entry of the officer is meant. For instance, if a particular building is trespassed upon by an officer under an illegal order or no order whatsoever from any municipal authority, there is no doubt he is liable for damages, even on sentimental grounds; but if the man has suffered by reason of the breaking open of a lock or of a door he can only sue for actual damages, and not for the loss of honour or other feelings under the present wording of the section. So I think the words I have proposed, viz., 'any damage that they may be legally entitled to,' cover all cases. I therefore suggest that they be added."

The Hon'ble Mr. BAKER said:—"I am altogether opposed to this amendment, Sir. In the first place, the wording is not such as could be accepted. The section would run thus:—

'All persons aggrieved by such irregularity may recover, in any Court of competent jurisdiction, full satisfaction for any damage they may be legally entitled to.'

"What the Hon'ble Member means by 'damage they may be legally entitled to' I don't know. But, putting that on one side, I object to the amendment. The section as it stands follows the existing law. The object is to exclude claims for sentimental damage, alleged injury to feelings, and matters of that kind. When municipal officers commit a trespass, if the municipal officers do actual damage they ought to be made to suffer. If a municipal servant acts in bad faith, if bad faith can be proved against him, he can be criminally prosecuted and punished; but it is quite unreasonable in ordinary cases to grant compensation merely for sentimental damages."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA said:—"I regret I cannot support this amendment. It seems to me that the language used in the second part of the section is a necessary consequence of what is stated in the first part. The officer is declared to be under no circumstances a trespasser; therefore, nothing but special damage can be recoverable from him. Even if the amendment of my hon'ble friend were adopted, the Court would have to say that the damage to which the man was legally entitled was special damage. The amendment would not improve matters in the least."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Apart from the law, I don't think the Council ought to accept the amendment. I think no case has been made out for a change of the law in this respect, and I am also of opinion that municipal servants should be protected. Having regard to the fact that municipal servants need protection, and that there has been no abuse of the existing law which is identical with this section in the Bill, I do not think that any case has been made out for making the section more stringent than it is at the present moment. I am afraid I must oppose the amendment."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I would only add one word. 'Damage that they may be legally entitled to' would be, according to the existing law, the special damage sustained by them. The provision, therefore as it stands is quite correct."

The Hon'ble BABU JATRA MOHAN SEN, in reply, said:—"I should like to make one observation, viz., when the first portion of the section declares that the action of the officer does not amount to trespass because he contravenes a rule, it only goes to show that he is not liable to criminal prosecution. If the

definition of 'special damage' is, as some Hon'ble Members seem to think, that it includes damages touching injury to the feelings, I would not like to press the amendment; but if that is not so, as the Hon'ble Member in charge of the Bill indicates, I think this amendment ought to be carried."

The motion was then put and lost.

SECTION 228.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220R (now 223) the words "for a period of six years after the rate became due" be omitted.

He said :—"Sir, I confess I have been somewhat puzzled by this section. It seems to be taken from the Bombay Act, section 212; the words which I suggest should be taken out are not to be found there, and I have not been able to discover any special reason why they should be put in here. The Indian Limitation Act prescribes a period of twelve years within which a charge on immoveable property may be enforced, and I cannot make out why, in the present instance, that period should be shortened to six years. Further, it is by no means difficult to conceive cases in which this departure from the ordinary law may lead to anomalies, for instance, the case of an occupier who is compelled to pay the owner's share of the consolidated rate. I would venture to suggest that the words 'for a period of six years after the rate becoming due' should be omitted and the law allowed to take its ordinary course."

The Hon'ble MR. BAKER said :—"These words are not in the Bombay Act, and they were not in the Bill when it came up before the Select Committee. They were inserted in Select Committee at the instance of the Hon'ble Babu Norendra Nath Sen."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"At the instance of the Corporation."

The Hon'ble MR. BAKER said :—"I am personally in favour of the amendment, and I think the words are liable, as the Hon'ble Mover has pointed out, to cause confusion. I hope the Council will accept the amendment."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I think my hon'ble friend is somewhat in error in thinking the objection was made by the Hon'ble Babu Norendra Nath Sen. It was made by the Corporation as a reference to the proceedings of the Bill Committee will show."

"I quite agree that it would be to the interest of the Corporation that these words should be omitted. But we have not only to deal with the Corporation, we have also to deal with the rate-payers; and I don't think, Sir, the words that are put in here are words put in for the benefit of the rate-payers as against the Corporation. I don't think a debt against a particular rate-payer ought to be allowed to hang on for twelve years, and therefore it was on that account that the words were put in. In the original Bill the words did not occur, and then after much care and consideration the Select Committee came to the conclusion that they ought to be inserted, and I don't think they should be eliminated now. I admit that it would be better for the Corporation if the words were omitted, but we have to look at it from the point of view of the rate-payers. The members of the Select Committee representing the Corporation having taken the view that these words should be there, and having regard to the fact that the Select Committee after careful thought put in these words, they ought not now to be taken out. I venture to think, Sir, that we ought not to depart from a recommendation of the Select Committee in matters of detail of this kind unless very strong reasons have been shown to the contrary. Further, the Select Committee were unanimous in inserting these words, and they were inserted at the instance of the Members representing the Corporation. Having regard to these facts, I think the words ought to be retained."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I think, if it be considered that when the consolidated rate is not paid by the owner a demand would be made on the occupier, these words should be omitted. It is true that in the Limitation Act the period is six years for moveable property and twelve years for immoveable property; but I think the words be better omitted for the reason I have stated."

The Hon'ble MR. OLDHAM said:—"Sir, in the Select Committee I agreed to this section. I had not then had the advantage of hearing the exposition of the general law on the subject, which we have had from the Hon'ble Member for the University. If I had understood the case, I do not think I should have agreed to the insertion of these words."

The Hon'ble MR. BOLTON said:—"I see no objection to the retention of the words of the Bill. They have been recommended by the Select Committee unanimously, and it is desirable that these liabilities should not be kept on the books for so long a period as twelve years. A fixed and comparatively short period will impress on the collecting establishment the necessity of activity in realizing arrears and conduce to better collections. If the period of limitation is undefined, slackness would ensue."

The Hon'ble MR. MACKENZIE said:—"I don't think it has been suggested by the Hon'ble Dr. Asutosh Mukhopadhyaya that it should be twelve years, but merely that the law should take its course whatever the period may be."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I have patiently listened to what has fallen from my hon'ble friend Babu Surendranath Banerjee, but I see absolutely no reason why this Council should be so tender to the dishonest rate-payer who thinks it his duty to evade the ordinary law. If *A* has a charge on the property of *B*, the law of the land entitles *A* to enforce the same within a prescribed period of limitation. If *B* happens to be a rate payer and *A* happens to be the Calcutta Municipality, there is no imaginable reason why a shorter period of limitation should be prescribed. In the absence of very special and cogent reasons, no departure should be made from the ordinary law to the injury of the Corporation."

The motion being put, the Council divided as follows:—

Ayes 11.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Dr. Asutosh Mukhopadhyaya.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Delawan
Hosain Ahmad.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.

Noes 7.

The Hon'ble Mr. Handley.
The Hon'ble Raja Bahadur Ranajit Sinha
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was carried.

SECTIONS 230 AND 232.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 220T, clause (a) [*now* section 230, clause (b)], the words "and enclosing the sum demanded" be omitted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 220T, clause (b) [*now* section 230, clause (c)], after the word "and" be inserted "after depositing the amount demanded."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that to section 220T (now 230) the following be added :—

“(c) or pay the sum demanded, together with any costs incurred under section 220O (now 214).”

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 220V (now 232), line 3, for the word “either” the word “any” be substituted, and that the words “and has not paid the whole amount of the demand” be omitted.

He said :—“These amendments, Sir, have been suggested principally because it was not without considerable difficulty that I could make out the object of the section as it stands. It seems to be a new section, and I merely try to give effect to what appears to be the possible intention of its framers. Section 220T (now 230) contemplates two alternatives, namely, the defaulter may either elect to be prosecuted or contest the demand; but section 220V (now 232) shows by implication that there may be a third alternative, namely, the defaulter may pay up the demand. If so, all the three alternatives ought to appear in proper order in the earlier section. In the next place, it seems to me somewhat anomalous that, if a man elects to be prosecuted, he must, as a condition precedent, enclose the full amount demanded; for, whether he pays or not, he has rendered himself liable to prosecution. On the other hand, it seems desirable to insist on a deposit where the defaulter chooses to contest the demand; this would discourage frivolous objections, and would render a prosecution unnecessary when the objections are over-ruled.”

The Hon'ble MR. BAKER said :—“It is rather awkward that these three amendments have been taken together, because the first two, to my mind, stand on an entirely different footing from the third. I will deal with the first two to begin with; and I object to these for this reason: I think that they will encourage people to elect to be prosecuted rather than to appear before the Chairman and contest the demand. We know that in the past, when prosecutions have been the only means of recovering these municipal dues, the whole of the work connected with the license-tax and the horse and carriage tax has got into very great confusion. It has been the law hitherto that these taxes could only be collected through the agency of the Criminal Courts. I must say that the Criminal Courts are a most inappropriate agency for collecting municipal dues, and how that law came into existence I cannot understand. We have endeavoured in this section to make criminal prosecutions as unpopular as possible. Therefore we provide that, if the defaulter elects to go before a Magistrate, he must have in the first instance deposited the amount. That applies to both the first two amendments. We only provide that money must be deposited in the event of a man electing to be prosecuted. The Hon'ble Member wishes to do exactly the reverse, that is, he would not require a deposit if the defaulter elected to be prosecuted, and he would require a deposit if the defaulter elected to go before the Chairman. Then, as regards the third amendment, the Hon'ble Member is quite right in saying that this provides a third alternative, but the intention of the section is that this third alternative shall exist all the time. My own feeling is that the Hon'ble Member is right and that it is desirable expressly to include this third alternative in the section. The three alternatives would therefore be that a man may elect to be prosecuted, or he may appear before the Chairman and contest the demand, or he may pay up the demand. That is what is intended, and that is what the Secretary says is the effect of this section. My opinion is that it would be better to express the third alternative more clearly, but as it is a matter of drafting I do not feel justified in opposing the expert opinion of the Secretary.”

The Hon'ble MR. BOLTON said :—“I would point out that the words ‘elect to be prosecuted’ are very unusual. The law cannot consistently declare a man liable to prosecution and at the same time permit him to ‘elect’ whether he shall be prosecuted.”

The Hon'ble MR. BAKER said :—“We give him the power to elect to be prosecuted. Under the provisions of section 220S (now 229) the Chairman has the power to prosecute in any case.”

The Hon'ble MR. BOLTON said:—"Yes, but 'intimate that he will await a prosecution' would be an improvement."

The Hon'ble THE PRESIDENT said:—"I have consulted the Secretary; and he says that there will be no objection to place a third alternative in the manner suggested, and I think it is desirable to put that alternative as much in the forefront as possible and to alter the sections accordingly."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"That will, to some extent, meet my views. There is one point which I am bound to say has been completely overlooked. In one respect clause (a) [now (b)] is really inconsistent with section 606 (now 578), sub-section (2) of which provides that 'such fine when levied shall be taken in full satisfaction of the demand on account of such license.' Surely it is not intended that a man should pay up the money under this clause, then elect to be prosecuted, get himself fined and pay the fine in satisfaction of the demand. You cannot make him pay twice, once in the shape of a deposit and a second time in the shape of a fine."

The Hon'ble MR. BAKER said:—"The fine must be more than the tax."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Why do you make him deposit the amount of demand?"

The Hon'ble MR. BAKER said:—"To discourage prosecutions."

The Hon'ble THE PRESIDENT said:—"The deposit will be taken as part of the fine."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"It ought surely to be, only it is not so stated. I cannot believe that it was ever intended that he should be made to pay twice."

The Hon'ble MR. BAKER said:—"I have no objection to that being made clear, that the amount paid in is to be taken as part of the fine."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"The deposit should be set-off against any fine levied under section 606 (now 578)."

The Hon'ble THE PRESIDENT said:—"It would be clearer as a clause to section 606 (now 578), I think."

The Hon'ble MR. BAKER said:—"I will consult the Hon'ble Member after Council, and we can settle the matter then."

The further consideration of these amendments was then postponed.

NEW SECTION.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following be inserted after section 225B (now 242):—

"It shall be the duty of the Chairman to test the purity of the supply of filtered water once every week and to lay the result before the General Committee."

He said:—"I am perfectly certain my hon'ble friend will sympathise with this amendment. It is a question which affects the purity of the water-supply. The water-supply ought to be tested and the result ought to be laid before the General Committee, and the people of Calcutta ought to know the character of the water they have to drink."

The Hon'ble MR. BAKER said:—"It is already provided for in section 590, clause (5) [now section 559, clause (5)], which enacts that the General Committee may make bye-laws for directing and regulating the purity of filtered water."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I do not think it is provided for. The General Committee may order that the water should be tested once month. It is too important a matter to be left to the discretion of the General Committee. I cannot see what possible objection my hon'ble friend can have to the water being tested once a week. I remember perfectly well, Sir, that there was a time when the water was tested every week by the analyst to the Corporation, and the results were laid before the General Committee. That practice has unfortunately been discontinued, I am sorry to say, and it ought to be revived as a matter of statutory obligation. It ought not to be left to rules and bye-laws."

The Hon'ble MR. BAKER said:—"I may remind the Hon'ble Member that bye-laws are submitted to the Corporation for sanction."

The Hon'ble MR. BUCKLEY said:—"I think it is desirable that the water-supply should be tested once a week."

The Hon'ble MR. APCAR said:—"Sir, if there is a feeling that it is advisable to have this test once a week, surely we ought to have a provision to that effect."

The Hon'ble MR. MACKENZIE said:—"As regards the testing itself, Sir, I would be prepared to go even further than the amendment and say that the test ought to be made every day. It is, however, in my opinion a matter that ought to be left to the discretion of the General Committee."

The motion being put, the Council divided as follows:—

Ayes 10.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Handley.
The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apar.
The Hon'ble Dr. Asutosh Mukhopadhyaya.
The Hon'ble Sahibzada Mahomed Bakhtyar Shah.
The Hon'ble Mr. Slack.

Noes 8.

The Hon'ble Mr. Buckland.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Khan Bahadur Maulvi
Delawar Hossain Ahmad.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.

So the amendment was carried.

SECTION 246.

The Hon'ble RAJA RANAJIT SINHA BAHADUR OF NASHIPUR moved that the words "and watering roads and gardens" be inserted after the word "drains" in line 1 of clause (ii) of sub-section (2) of section 225E (now 246).

He said:—"There are many houses, especially in the southern part of the town, with small compounds attached to them. In the said compounds there are small roads for the entrance and exit of carriages, and small gardens attached to them. I don't think that it is reasonable for us to tax the owners or occupiers for the small quantity of unfiltered water required for watering these roads and gardens, especially where the occupiers or owners do not consume the full quantity of water allowed to them under the law."

The Hon'ble MR. BAKER said:—"The question in regard to this matter is whether people should be allowed to use the unfiltered water for their gardens and compounds without paying for it. The present practice is that they pay for it, and, if the amendment were adopted, the Corporation would lose some revenue. I do not think the Hon'ble Member has made out any case for this change."

The motion was then put and lost.

SECTION 248.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the word "five" be substituted for "four" in line 4 of section 226 (now 248).

He said:—"Instead of 4,000 gallons per day, I beg to recommend that every person paying the water-rate should be permitted to have 5,000 gallons of filtered water for every rupee of the water-rate. I may say—and it is my duty to put it on record—that in the original Bill the amount to be supplied was not 4,000 gallons but 3,000 gallons; and, as a result of the discussion we had in Select Committee, the quantity was raised to 4,000 gallons. I thankfully accepted that, but, Sir, it is not enough, and there is no reason why the rate-payers should not get water at the rate of 5,000 gallons per rupee. I have been making enquiries, and I find that the cost price of 1,000 gallons is about 10 pice, so that for a rupee you would get more than 6,000 gallons of water. I do not want to put it so high as that. I wish to give to the rate-payers, whose money has made the water-works, only 5,000 gallons of water, and not 6,000 gallons, to which indeed they are entitled at the cost price. Then, Sir, there is this consideration. You treat the rate-payers, even after the concession you have made, exactly in the same way as you treat outsiders. We supply water to the Barrackpore Cantonment at the rate of 4 annas for 1,000 gallons, that is, 4,000 gallons to the rupee, and you propose to supply the rate-payers of Calcutta at the same rate. I don't think, Sir, the rate-payers of Calcutta ought to be treated in exactly the same way as the people of Barrackpore. I think a larger supply ought to be given to them. If we can sell water to the people of Barrackpore at the rate of 4,000 gallons per rupee, I am not making an exorbitant demand when I ask that the rate-payers of Calcutta should receive 5,000 gallons for the rupee. They would be entitled to 6,000 gallons, but I do not want to put it so high. I would be content with a rate cheaper than the rate at which water is supplied to the Barrackpore Cantonment, but below what the rate-payers would be entitled according to the cost price. I am perfectly certain the Council will be in strong sympathy with my proposal. I may say, Sir, that there is a very strong feeling about this amendment. I think, if my hon'ble friend refers to the numerous representations made to him, he will find that in the opinion of the rate-payers generally the question of water-supply is the most important question raised in this Bill next to that of the constitutional clauses. As Your Honour's Government has not been able to meet the wishes of the people in regard to the constitutional clauses, I ask that, as a small concession, they may be allowed this increased supply of filtered water."

The Hon'ble RAJA RANAJIT SINHA BAHADUR OF NASHIPUR said:—"I have an amendment on the paper, Sir, which is identical with that which has just been moved by my hon'ble friend, and so I beg that they may be considered together. From what has fallen from my hon'ble friend, Babu Surendranath Banerjee, there remains very little for me to add. In one Hindu family there live several distantly related dependents, and the Hindus cannot move an inch in their daily household business without water; so they will feel much if water-supply is so restricted."

The Hon'ble Mr. BAKER said:—"I am in entire sympathy with the Hon'ble Members in their desire to get the largest possible supply of filtered water for the people of Calcutta. The filtered water-supply is one of the greatest boons which have ever been conferred upon the city. But this matter has to be looked at from two points of view. It must be looked at not only from the point of view of the rate-payers who receive the water, but also from the point of view of the Corporation who have to supply it; and I am afraid, Sir, my Hon'ble friend has looked at the matter solely from the point of view of the public, and left the point of view of the Corporation out of sight. I think, Sir, we are all agreed that the object to be aimed at is to fix the statutory supply of water at the highest possible figure consistent with a reasonable margin of safety. Now, Sir, the Hon'ble Member said that the actual cost is

about 6,000 gallons to the rupee. It is, as a matter of fact, about 6,300 gallons to the rupee. These figures we obtain in this way. The daily supply is $20\frac{1}{2}$ million gallons; the total amount of water-rate is about $11\frac{1}{2}$ lakhs. Dividing one figure by the other, you get about 6,300 gallons for every rupee. At first sight then, it looks as if the Hon'ble Member is right, and that it would be possible to give the rate-payers a statutory supply of 6,000 gallons for every rupee; but there are two reasons which make it impossible to do so consistently with safety. When we say that the daily supply is $20\frac{1}{2}$ million gallons, it means that that is the quantity of water registered at the pumping stations. The way in which the water is registered there is this: We know exactly the capacity of the pumps; we know exactly the amount of water raised by each stroke of the engines; and we obtain the total quantity of water raised by multiplying that capacity by the number of strokes. Now, Sir, if our whole system of mains and pipes and fittings were absolutely perfect, then the total quantity of water registered in one day would accurately represent the quantity of water which passes into consumption in the houses of the people. But, unfortunately, our system of mains and reservoirs and pipes and fittings is very far indeed from being perfect; in fact, it is very faulty. What the amount of the leakage is will, I fear, never be known until some system like that which they have in Liverpool, or Deacon's waste-water meter system, or some other system of that description, is introduced into Calcutta. A puncture in a pipe, about the size of a pin's head, will allow 100 gallons of water to run to waste in 24 hours. Mr. Hughes told Mr. Buckley and myself, in one of the numerous conferences we had with him on this subject, that he would not be surprised to hear that one-third of the whole amount of water never reached the houses of the people at all. It runs away to waste at the innumerable leaks all over the system. I don't wish to overstate the case; so I would take the leakage at one-fifth of the whole. I understand Mr. Buckley will bear me out in this. If you therefore take one-fifth from 6,300 gallons, it leaves you only 5,040 gallons. That is a very small margin in excess of what the Hon'ble Member wants, and for this reason alone it would not be safe to allow 5,000 gallons per rupee.

"But there is another reason also. The statutory supply which we propose to make in this section is a general all-round average rate. It represents the quantity of water we can supply throughout the town if everybody were to receive his proper quantity of water, neither more nor less. But there are a number of houses which receive far more than their statutory supply. Taking the average of the town and the suburbs together, I think the average supply is about 31 gallons per head per day. In the town proper it is about 38 gallons and in the suburbs it is between 11 and 12 gallons. In some parts of the northern quarter of the city the consumption in some of the houses rises as high as 70 gallons a day. Now, so long as that is the case, so long as it is impossible to put an end to this state of affairs, it is evident that many of the people in other parts of the town must be content with a smaller quantity than the supply allotted to them under the Act. Therefore, it is impossible for us to stipulate that every person shall receive the full all-round average rate. On account of this we propose to deduct 1,000 gallons per rupee, in order to allow a margin of safety, and this brings us from the 5,040 gallons to 4,000 gallons which we provide for in the Bill.

"I will only add, Sir, that the Hon'ble Members may rest assured that the rate-payers will not receive one single pint of water less under this enactment than they would if the amendments of the Hon'ble Members were accepted. It is the strongest wish of everyone connected with the Corporation to extend and improve the supply of filtered water throughout the town, and we shall gradually work up, I hope, to a continuous and unlimited supply in the future."

The Hon'ble Mr. BUCKLEY said:—"Sir, I should be very glad if I could support the amendment of the Hon'ble Babu Surendranath Banerjee. I entirely sympathise with his wish to give as much water as possible to the people. Mr. Hughes went very fully into this question and made out a case even stronger in some respects than that of my hon'ble friend himself. Mr. Hughes,

by a calculation which he made, came to the conclusion that the water could be delivered in the town at cost price at the rate of about 8,000 gallons to the rupee, provided that the profits made by sale of water were deducted from its cost price. Mr. Hughes thought the really equitable and proper way was to have a sliding scale which he worked out with considerable care and trouble. This sliding scale provided for only 1,500 gallons to each rupee of water-rate in some cases of large houses and for as much as 5,000 gallons for the value in small ones; but this would not be a workable arrangement. The Hon'ble Mr. Baker has put this case so excellently that he leaves me but little to say, but I would support the main reason he put forward why it is impossible to give these 5,000 gallons per rupee. It is in consequence of the great loss of water between the pumps and the houses. I do not suppose that the Municipality of Calcutta have the slightest idea of the amount of waste which goes on. We hear a great deal of the waste of water in Calcutta, and no doubt the waste is gross. When we speak of that waste we generally have in mind the many leaking taps which probably every gentleman in this room has in his own house. I know I have them in mine. But the amount of leakage which goes on between the pumping stations and the houses is also, most probably, enormous. As the Hon'ble Mr. Baker has said, the water-works in Calcutta are old and in some cases are defective. I have here a report laid before the Institution of Civil Engineers within the last few years. Speaking of the water-works in England, it says that the waste of water in the main and connections before the water is drawn off at the taps amounts in many water-works to one-half of the original supply. Now, I don't think that is true in Calcutta. I don't think the loss here is as great as that; but it is very large. Sir Frederick Bramwell, who made investigations into this matter, arrived at the conclusion that in many cases of large water-works the amount of water actually drawn off at the taps for consumption was not more than one-third of the entire original supply. There is no question whatever that the loss between the pumps and the houses is very great, and it is not possible to deliver water in the houses at the price which it may be proved to cost at the pumping stations. Now, Sir, this Bill introduces a great change in the water-works of Calcutta, and when that change has been fully established, and the enormous improvement which it must undoubtedly effect has been carried out, it may be possible that the Hon'ble Member will get his 5,000 gallons to the rupee. But if Hon'ble Members will study this Bill, they will see that great care has been taken to lay down a stipulation that these alterations are to be introduced gradually during a long series of years—seven years I think it is. I won't detain the Council by stating what the reason for this stipulation is. I will only say that it is a very good reason. I am perfectly certain that if this amendment is carried now, and the 5,000 gallons per rupee is made a statutory allowance which everybody may have a right to demand, there will be some people in the town who will not get half what they are entitled to, and I believe there are many now who will not get 3,000 gallons for each rupee of water-rate paid by them. If the statutory allowance be raised to 5,000, I believe the Municipality would find great difficulties in meeting demands for water. There are other reasons; and one is that this new system of continuous supply will cost more money, and there is also one other reason that there is no question whatever (looking to the experience of the many towns in England which have gone through the change now going to be introduced in Calcutta) that the quantity which may be consumed in Calcutta itself, without detracting in the least from the needs of the people, will, be very largely reduced indeed, and consequently the cost per 1,000 gallons may be increased. I strongly advise the Council to reject the amendment."

The Hon'ble BABU SURENDRANATH BAYERJEE, in reply, said:—"I am grateful to the Hon'ble Member in charge of the Bill and to my hon'ble friend opposite, Mr. Buckley, for the sympathy they have expressed with my amendment. I can assure the Council that there is a very strong body of public sentiment behind the amendment I have laid before the Council. My hon'ble friend has observed that I have approached the question not from the point of view of the Corporation, but from the point of view of the rate-payer. Sir, I do approach the question from that standpoint. I am first a citizen and then a

member of the Corporation. Whatever impulses I may have as a member of the Corporation, they are nothing as compared to my impulses as a citizen of the great Indian community to which I have the honour to belong. And, Sir, while I have listened with the greatest possible respect to the statements made by the two Hon'ble Members who preceded me, those statements have not convinced me that I was wrong and that they are right. The great difficulty, so far as I can gather, is that we lose a great quantity of water by leakage, and that people in some parts of the town use much larger quantities of water than they are entitled to use. Then, Sir, Mr. Hughes comes upon the scene, and he says that at the cost price the people of Calcutta would be entitled to 8,000 gallons of water to the rupee. Can anybody approximately tell us what the leakage is? Can anybody tell us what the amount of water is that is wasted by people in the town? No definite statements are put forward, but vague allegations are made; and upon these vague allegations we are called upon to withhold from the people of Calcutta the great boon for which they cry at the hands of this Council, namely, that they should be supplied with water at the rate of 5,000 gallons a day. I say you have not been able to make accurate calculations; you have not got the data for making accurate calculations; and yet, upon vague calculations, you are prepared to refuse to the people of Calcutta the great boon which they are entitled to receive at your hands, *viz.*, a larger quantity of water than what they now receive. If you had facts and figures which could be scrutinized, I would accept your conclusions, and I would ask my constituents to accept those conclusions. I could tell them that we cannot grant their prayers in this matter; it is perfectly impossible for the Government to grant them. But, Sir, you have not been able to give us any specific facts beyond these general statements. Sir, I desire to carry the point a little further. My hon'ble friend Mr. Buckley has said, and I think he has made the statement more than once at meetings of the Select Committee: 'Give the people of Calcutta a continuous supply of water, and then there will be less waste.' I think I am right in that statement."

The Hon'ble MR. BUCKLEY said:—"Certainly."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"My hon'ble friend in charge of the Bill was good enough to lay a statement before the Select Committee, in which he proved that wherever a system of continuous supply has been introduced it has led to a considerable saving of water. That is the statement upon which I take my stand. Therefore, Sir, we have this principle of continuous supply and no waste. I think, Sir, I am right in inferring as a corollary to that principle that, if we have a larger supply, the waste will be less than at present. If a continuous supply means no waste, a larger supply means less waste. Therefore, if instead of 4,000 gallons we give 5,000 gallons, there will be less waste. I think I am entitled to that conclusion. Then, Sir, the people of Calcutta will find that the Government has made an effort to comply with their wishes in this respect. And I am perfectly certain the leaders of the community—if only as a recognition of this concession—would co-operate with the Corporation and the Government to see that there is no waste of water in Indian houses. Therefore, Sir, if it is proved that continuous supply means a saving of water, then I am entitled to hold that, if you give the people 5,000 gallons, there will be a saving in waste. I am bound to say that in my opinion there is considerable exaggeration with regard to the waste of water in Indian houses. That there is waste I do admit, but I am afraid there is a considerable measure of exaggeration with regard to what that waste is; and where you have no definite facts you are liable to be carried away by exaggerated statements. If that be so, we ought not to legislate, so to speak, in a panic upon the basis of exaggerated statements and withhold from the people of Calcutta the boon which I am perfectly sure Your Honour's Government is anxious to grant them. I wish my hon'ble friend would get rid of those apprehensions which he has derived from consultation with the municipal executive. People in their responsible positions are apt to be cautious, and I respect their caution; but we as legislators stand outside the particular grove and the particular sphere in which they are accustomed to move. We ought to take a wider view of the

situation, we ought to be able to sympathise with a public grievance, and not to tender our consciences to their keeping. We should rather exercise an independent judgment in regard to those conclusions which they desire us to accept. I ask the Council not to be led away by the exaggerated fears of the municipal executive. I ask the Council to take note of their apprehensions, but to judge the matter independently, having regard to their wider knowledge and their deeper sympathies. I trust, Sir, that Your Honour's Government will see its way to accept the amendment."

The motions being put, the Council divided as follows:—

Ayes 7.

The Hon'ble Rai Durga Gati Banerjee, Bahadur.
The Hon'ble Raja Bahadur Ranajit Sinha, of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 11.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar Shah.
The Hon'ble Khan Bahadur Maulvi Delawar Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble DR. ASHUTOSH MUKHOPADHYAYA moved that in section 226, (now 248), line 4, the words "not more than" be omitted.

He said:—"I hope, Sir, that the Hon'ble Member in charge of the Bill will be reasonable enough to accept this amendment. I was listening with great attention to the debate on the last two amendments, and they seemed to me to be so absolutely harmless from every point of view, certainly from a practical point of view, that I thought the Hon'ble Member in charge of the Bill would accept them. It would not matter in the least whether instead of 4,000 gallons you put in 5,000, or 10,000, or 20,000 in the section as it stands. Let us read the section:—

'Subject to the provisions of section 265C (now 283), the occupier of every building connected with the water-supply shall be entitled to have, free of further charge, *not more than four thousand gallons* of filtered water for every rupee paid to the Corporation as water-rate on account of such building, together with a sufficient supply of unfiltered water for flushing privies, urinals and drains, and for cleansing stables, cattle-sheds and cow-houses occupied by animals which are not kept for profit or hire.'

"It is clear, therefore, that the Corporation is under a statutory obligation to supply not more than 4,000 gallons of filtered water. What difference would it make to the Corporation if we solemnly declared that their statutory obligation was to supply not more than ten thousand gallons? Manifestly none whatever, so long as a minimum is not fixed. It seems to me, therefore, that the fight so long was about a mere shadow. Now let us look to the existing law, which you will find embodied in section 155 of the Act of 1888. Curiously enough, the words 'not more than' are not to be found there, and the Corporation is under a statutory obligation to supply three thousand gallons, neither more nor less. Under the new law, the Corporation will be under no obligation whatsoever; even if a single gallon is supplied, there will be ample compliance with the letter of the law. I quite agree with the Hon'ble Member in charge of the Bill that there are two sides to this question—the Corporation's point of view and the rate-payers' point of view, and I can very well understand that the words 'not more than' have been inserted from the Corporation's point of view; but at the same time I urge that, from the rate-payers' point of view at least, a minimum ought to have been fixed; it would certainly have been far more satisfactory if the section had provided that 'not more than 4,000 and not less than 3,000 gallons of filtered water is to be supplied.' If it is intended that 4,000 gallons of water should be supplied, and if it is possible to supply

that quantity, the words 'not more than' are superfluous. If it is suggested that even so much as 4,000 gallons cannot practically be supplied, but only 3,000 gallons can be supplied, let us have the law as it now stands. I would without hesitation prefer 3,000 gallons to 'not more than 4,000 gallons,' which, in its beautiful vagueness, may mean anything from one to four thousand gallons.'

The Hon'ble Mr. BAKER said :—"I think my reply to this will have been anticipated from what I said just now. These words are put in in order to protect the interests of the Corporation. We cannot undertake under the present defective system to give the full supply to everyone. We should be able to give everyone 4,000 gallons if everyone took what he was entitled to or approximately so; but, as I said just now, that is not the case. The actual supply obtained in different houses in different parts of the town varies very widely. In the suburbs many people get only 10 to 11 gallons per head, and the average in the suburbs is only 11½ gallons per head per day. If we do not put in these words to safeguard the interests of the Corporation, there will be danger that the Corporation will be made liable for damages by disappointed rate-payers in the suburbs. That is the sole object with which these words were inserted."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, in reply, said :—"I confess, Sir, that the attitude of my hon'ble friend has completely surprised me. Protect, if you like, the interests of the Corporation, but what possible justification have you for this total, absolute sacrifice of the interests of the rate-payer? Surely, if a maximum is fixed for the protection of the one, a minimum should be fixed for the protection of the other; if the rate-payer is not entitled to ask the Corporation to supply more than a fixed quantity, the Corporation, in its turn, should be bound to supply not less than a minimum quantity. Nothing can be more rational, and I venture to affirm that no sufficient reason has been suggested by the Hon'ble Member in charge of the Bill why the existing law should be changed in this arbitrary and quixotic fashion. My hon'ble friend, Babu Surendranath Banerjee, gratefully acknowledged that this was an advance upon the old law; but it seems to me to be a delusion. The existing law fixes a minimum of 3,000 gallons, and makes it obligatory upon the Corporation to furnish at least that quantity for every rupee of tax paid. The new law will lay the Corporation under no such obligation; the tax-payer continues to be under an obligation to pay the water-rate, but he has no longer any corresponding rights. I affirm without the least hesitation that the new law is distinctly retrograde in this particular, and those that have eyes to see will not be slow to perceive that it is a move in the wrong direction and entirely sacrifices the interests of the rate-payer."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I am not prepared to accept that view of the matter at all. I should be glad if a minimum were fixed, and my hon'ble friend may not remember it, but 'not more than' was fixed as the result of a compromise. The Hon'ble Member would not on any account give us more than 3,000 gallons, and then he gave us 4,000 gallons, subject, however, to the condition referred to. I should welcome a minimum of 3,000 and not more than 4,000, but I am under no delusion with regard to the matter. I am in the full possession of my senses at any rate so far as this particular section of the law is concerned."

"The Hon'ble Mr. BAKER said :—"Four thousand gallons is a maximum to be steadily worked up to. That is how the 3,000 gallons has been treated under the existing law. As a matter of fact, many people have not received 3,000 gallons under the present Act."

The motion was then put and lost.

To Hon'ble BABU JATRA MOHAN SEN moved that the following proviso be added to section 226 (now 248), namely :—

"Provided that no occupier or occupiers of any building shall be liable to any further charge unless the supply exceeds fifteen gallons *per head per diem*."

He said:—"I should like, with Your Honour's permission, to add these words: namely, 'of the inmates of such building,' after the words 'per head' in my proposed amendment, the amendment running as follows:—

'Provided that no occupier or occupiers of any building shall be liable to any further charge unless the supply exceeds fifteen gallons per head of the inmates of such building per diem.'

"The reason why I have proposed this amendment is that it is difficult to sell water at so many gallons per rupee to the people, although, according to the calculation of expenses of supplying water and the taxes, a minimum of 4,000 gallons has been fixed; but it would be difficult to carry this out practically. We are all aware that the middle class of people pay moderate water-rates, but their demand for water-supply is great. They live in small houses with large families, and they require more water. The richer people probably pay larger rates and do not require so much water, because they can afford to live in comfortable houses and pay larger rates, and their families may not be so large as to require the maximum quantity of water that they are entitled to under this section. Therefore, when a further charge is going to be made for larger supply, I think it would be very hard upon the poorer classes, and I think I express the feelings of the richer class if I say that they would not object to their poorer neighbours getting more water than they are entitled to at their cost because they do not require as much water as they pay rates for. The Hon'ble Member in charge of the Bill has said that the least quantity of water consumed by an individual is 11 or 12 gallons. Therefore, when I fix 15 gallons per head, it is, I think, a clearly moderate demand. I am sure this proviso will not in any degree tend to bring any loss upon the Municipality in this matter. It is well known, Sir, that in India, and especially in Calcutta, the demand for water is very great, and the Hindus require a large supply of water, and it is not unknown that there are many members of a family who bathe twice daily. Therefore, 15 gallons of water, which will be a little over three *kaisers* of water per head, is not, I think, very large. With these observations I would recommend this proviso for acceptance by the Council."

The Hon'ble MR. BAKER said:—"The modification which the Hon'ble Member has now made in his amendment makes it a little more definite than it was before. As it originally stood, I was unable to make out what the actual meaning of it was. Now I understand that the occupier is not to be liable for any further charge unless the supply exceeds 15 gallons per head of the inmates of the house. The Hon'ble Member, in the first place, spoke about poor people living with large families in small houses and requiring a great deal of water, and he said it would be a hardship to them if they had to pay more for the excess water which they use. The Hon'ble Member seems to think that water is given to them as a charity, or that it should be so given them. That is not the position at all. People are entitled to the water they pay for, neither more nor less; and no man has any sort of right to expect a larger supply of water merely because he is poor, or, least of all, merely because his family is large. Has the Hon'ble Member really considered what the effect of the amendment would be? I will give an instance. Take the case of a man with his wife and three children living in a house and using exactly their 15 gallons of water per head per day. They would not be bound to pay any additional penal rate. Now suppose one of those children dies and the family goes on using the same quantity of water as before? Does the Hon'ble Member intend that thereupon that family should become liable to pay an additional rate? I can hardly think that that was his intention, but that is the direct effect of his amendment. Take another case. Suppose that this man, his wife and three children are living in a house, and they are using more water than they are entitled to and were being charged for it. Suppose a baby was born in the house, and the addition of that child, which used no water at all, raised the supply to which the occupier was entitled under this clause to more than he was actually using. Would therefore the family cease to be liable to pay that additional rate? I am quite certain no such system could possibly be worked by which the supply of water to which people are entitled shall be made to depend upon accidents of this kind—accidents which happen from day to day,

and of which the municipal authorities can never possibly get information. The whole amendment is absolutely impracticable to my mind, and I cannot imagine any means by which it could be worked."

The Hon'ble MR. BUCKLEY said:—"I quite agree with the remarks which have been made by the Hon'ble Member in charge of the Bill that this amendment is absolutely impracticable. It could not possibly be worked in practice. But I do not think any gentleman need be afraid. I have not the slightest doubt that when the system of continuous supply is established in town, everybody will be able to get easily all the water they want. There is no necessity whatever to include this stipulation in the Bill."

The Hon'ble BABU JATRA MOHAN SEN, in reply, said:—"I beg to offer one observation in answer to the Hon'ble Member in charge of the Bill. The illustration which he gave of a member being born in a family or a member dying does not, I submit, affect my amendment. My amendment says that the water-supply is provided in the section itself, and, if further charge is going to be made, in that case only a calculation will have to be made as to whether a member has not consumed more water than 15 gallons per head. That is all. He will not be deprived of the water that he is entitled to under the section, but a further charge should be made if he has consumed more water than 15 gallons per head."

The motion was then put and lost.

SECTION 251.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 248 (*now* 251), line 7, after the word "owner" the words "but not recover from him otherwise" be inserted.

He said:—"Section 248 (*now* 251) provides as follows:—

'If any owner upon whom a notice has been served under section 247 (*now* 250) does not, within one month from such service, cause such necessary works as aforesaid to be completed, the occupier who gave the notice may cause the works to be provided or completed, and may deduct from the rent payable by him to such owner the expenses incurred by him in respect of such works, except so much of such expenses as may have been incurred under the circumstances mentioned in clause (b) of the said section 247 (*now* 250).'

"Section 247 (*now* 250) entitles the occupier of a masonry building to call upon the owner to provide all necessary works for bringing into the premises a supply of filtered water. If such requisition is not complied with, the occupier is himself entitled to have all the necessary works executed under section 248 (*now* 251), which further provides that he is entitled to deduct from the rent payable by him to such owner the expenses so incurred. I venture to suggest that this should be the only mode of recovery left to him; in other words, that he should be in a position to set it off as against the rent payable by him to such owner, but should not recover the amount from him otherwise. The object I have in view is the protection of the landlord. When such an occupier has called upon the owner to provide all necessary works for bringing into the premises a supply of filtered water and upon failure of the owner to carry out such requisition has himself incurred the expense, he should remain on the premises long enough to enable him to set off the expenses incurred against the rent, otherwise it might so happen that to suit his convenience he might leave the house shortly after, and then sue the owner to recover these expenses. I do not think that would be at all fair. Section 248 (*now* 251) gives a distinct advantage to the occupier; it enables him to execute the work himself and to deduct the expenses from the rent payable; it would be only fair to the owner to fence this in by a limitation in his favour, for he is justly entitled to claim that the tenant should remain long enough in the house to enable him to realize the amount he has spent."

The Hon'ble MR. BAKER said:—"I have no strong opinion about this amendment one way or the other, but it seems to me a little doubtful whether we should act rightly in withdrawing the legal power which the occupier

would have to recover this money in the ordinary course of law from the owner. It might happen that his tenancy came to an end not through any bad faith on his part, but owing to a cause over which he had no control, and for which he could not be responsible; and in that case I think it might be really hard upon him if he was not allowed to recover the money which he spent in making the house-connection. In that case it seems to me that the owner would get the benefit of the money spent by the occupier for nothing, and I am not sure that that result would be equitable. Still, as I have said, I have no strong opinion on the subject one way or the other."

The Hon'ble Mr. BOLTON said:—"I oppose this amendment, because the presumption is that the occupier will, in his own interest, continue to occupy the house for the period requisite for the full recovery from the rent of the amount chargeable to the landlord for this improvement. If, on the other hand, the occupier is compelled to leave the house by circumstances over which he has no control, the landlord would benefit at his expense through his inability to recover the amount still due to him by recourse to a suit. Any improvement made in consequence of a requisition of the occupier under this section is a permanent improvement of the tenancy, and a permanent addition to its value, which benefits the landlord. The provision is, finally, one of conservancy, and specially desirable on that ground. It is clearly advisable for the general health of the town that house-connections with the filtered water system should be as numerous as possible."

The Hon'ble Mr. OLDHAM said:—"I agree with the amendment, and I think the only argument against it is that suggested by Mr. Baker, but I also think that the occupant in such a case should take into account the precariousness of his position before he subjects the owner to what may be considerable expense."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I cannot support the amendment for reasons which I beg to state. In the first place, it would be taking away the general right of a person to recover his money by resort to the ordinary course. This provides simply a summary remedy, as it were, by withholding payment. In the next place, it may be that the work which would have to be done may be for a large amount, and he may have to wait for a long time to get himself recouped by withholding payment of the rent. Why should he be deprived of getting the amount spent as speedily as can be done? No interest can be charged for the amount, and that is another consideration. For these reasons I am sorry I am unable to support the amendment."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, in reply, said:—"There seems to be some misapprehension in this matter: section 248 (now 251) gives an exceptional right to the tenant which he does not possess under the common law. If a tenant who is in occupation makes any improvement for his own benefit, under the common law, he is not entitled to charge his landlord with the expenses. I was, therefore, very much surprised to hear the Hon'ble Babu Boikanta Nath Sen remark that my amendment puts a restriction upon the common law right. There is absolutely no such common law right; if there had been, section 248 (now 251) would have been wholly superfluous. We are not legislating here upon the law of contracts. As the law stands, a tenant is not entitled, simply because he has made improvements, to recover the expenses from the landlord; here an exceptional advantage is given to him; he has a special remedy, to enforce which a special procedure is prescribed. I wish to have it made clear that this is the only procedure which may be followed. I think it is only fair that, if a tenant chooses to incur so much expense, he ought also to take the risk. If he does not intend to stay on the premises long enough, he ought not heedlessly to take action under these special provisions."

The Hon'ble Mr. BAKER said:—"May I ask the Hon'ble Dr. Asutosh Mukhopadhyaya a question? If I have understood him correctly as to the state of the law, is not his amendment superfluous?"

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"That is what I thought, and I was surprised to hear the Hon'ble Babu Boikanta Nath Sen say that it is not so, and that there is a common law right which my amendment seeks to take away. The object of my amendment is not to change the law, but to make it absolutely clear."

The Hon'ble BABU BOIKANTA NATH SEN said:—"I would beg to add a word by way of explanation with regard to what has fallen from the Hon'ble Dr. Asutosh Mukhopadhyaya. The amendment is either superfluous or it is taking away the general right under the law. I do not accept his proposition that the tenant has got no such right."

The motion was then put and lost.

SECTION 253.

The Hon'ble BABU SURENDRANATH BANERJEE moved that section 252 (now 253) be omitted.

He said:—"I am happy to be able to say that my amendment involves no legal considerations. It is a matter of common sense, and I hope to be able to convince the Council that the amendment is one which ought to be accepted. Section 252 (now 253) provides:—

'Whenever it appears to the Chairman that any building is without a proper supply of water, and that such a supply of water can be furnished from a main not more than one hundred feet distant from any part of such building, the Chairman may, by written notice, require the owner to obtain such supply and to execute all such works as may be necessary for that purpose.'

"Sir, we may be perfectly certain that in an oriental country, where a person does not bring the water into his own house by means of a connection, there must be very strong reasons why he does not do so. The main may be only 100 feet from his house, and, if he does not take advantage of that circumstance and establish a connection and bring the water into his own house, there must be very strong reasons for it, and the strongest of all reasons is his poverty. The man is too poor to do it. He has not got the means. His instincts are in favour of it, but he has not got the means, and he cannot bring the water in. He goes every day himself to the hydrant or sends his son or relative to fetch the water. He is put to a lot of trouble to bring the water to his house. Therefore, Sir, there are the strongest motives operating on the mind of that man to bring the water into his own house, only if he had the means. And, Sir, is it not hard if he has not got the means that the Chairman should compel him to bring the water into his house and have a connection? I do not find the counterpart of this section in any Indian law. It is not in the mufassal law, not in the Bombay law, not in the Madras law. But there is a similar section in the English Public Health Act. But here people use much more water than in England. In England people fight shy of water; here people gladly use water. The precedent of England cannot possibly apply. Compulsion has to be used in England to oblige people to bring water into their houses. No such compulsion is necessary here. In a hot country we need no compulsion to bring water into our houses. Therefore, it seems to me to be rather hard, when the natural impulses of a man are so strongly in favour of a connection with his house for the purpose of the water, that the Chairman should have it in his power to compel him to bring water into his house. People may be left to their own impulses in the matter, and you may be perfectly certain that their strongest impulses would be in favour of bringing in the water, and, if they are not able to do so, the only reason that would stand in their way would be their poverty, and I hope the Hon'ble Member in charge of the Bill and the Council will sympathise with my amendment which is put forward distinctly on behalf of the poor."

The Hon'ble MR. BAKER said:—"I hope the Council will adhere to the section as it stands. It is taken from the provisions of the English Public Health Act, and, if such a provision has been found necessary in England, where the appreciation of the benefits of good water is of much older date than in this country, *a fortiori*, it is necessary here."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I strongly protest against that expression of opinion. The appreciation by the people of India of good water is to be traced as far back as 3,000 years before the English were a nation."

The Hon'ble MR. BAKER said :—"It is notorious that when the proposal was first made to introduce the system of filtered water in Calcutta, it was strongly opposed. Raja Degumbur Mitter proposed as an amendment that, instead of introducing filtered water, they should elaborate a scheme for the digging of tanks in Calcutta. I say if this provision is necessary in England, where people have been accustomed to appreciate the advantages of good water for many years, *a fortiori* it is necessary in Calcutta. I admit, Sir, that during the last 30 years since the water-supply has been introduced, the advantages of the system have been appreciated. The people have learnt the great benefits which flow from this system, and I admit much of what the Hon'ble Babu Surendranath Banerjee has said, that every one who can afford it will probably endeavour to have his house connected. But, Sir, I think we must not leave out of sight the fact that a good and efficient system of water-supply is one of the most potent factors making for sanitary improvement. It is one of the most important elements in connection with public health. Why should the Chairman be deprived of the power to extend this system to the house of anybody merely because, as the Hon'ble Member has rightly said, the occasion for the exercise of that power is not likely to happen very often?"

The Hon'ble MR. BOLTON said :—"Speaking on the last amendment, I observed that the provision which enables an occupier to force his landlord to establish water-connection with his house is one of conservancy. The provision which the Council is now discussing is supplementary to that. In the one case the occupier can force his landlord to connect the house with the water-supply; in the present case a similar power of compulsion is given to the Chairman. It would doubtless be hard in some cases that this power should be exercised, but the Chairman may be trusted to use his discretion reasonably. A limitation is, moreover, imposed for the protection of the people from too heavy an expenditure, and it is found in the words: 'that such water-supply can be furnished from a main not more than one hundred feet distant.' The distance must then be taken into account, and by limiting it to one hundred feet or less, the expense is kept low. It is not left to the Chairman to require the connection whatever the distance may be between the building and the main."

The Hon'ble MR. APCAR said :—"I think there is a distinction between the two cases. In the former case it is the occupier who wants the water. The owner is not so much concerned with the immediate use of the water, though he may be forced to pay for it. Here it is wholly different, because it is the occupier who may be so poor that he is unable to pay for the extension of the water-supply to his own premises, and I confess, although I listened very attentively to the Hon'ble Member in charge of the Bill, I have wholly failed to ascertain that he has made out a case for the application of this law to Calcutta. Whatever objection there may have been to the manner or method of the supply of water taken by the Hindus in days gone by, we must not forget that it was the way in which the water was to be conveyed to them was the chief ground of objection. There is no doubt that there was the strongest appreciation, and always has been, on the part of the Hindus, for water. They worship water, and if they do not get the water-connection into their houses it is for some real cause, and if for some real serious cause, I should be reluctant to give anyone the power to force them to the expenditure that they would have to incur under this section, which my hon'ble friend Babu Surendranath Banerjee seeks to have omitted from the Bill; and I support the mover in his amendment."

The Hon'ble MR. BUCKLEY said :—"I confess I do not quite understand how the poorness and poverty of the occupier applies here. The occupier has to pay the water-rate when his house is connected or if his house stands within a certain

distance of the water-mains, and the water-rate on his poor house will be a comparatively small amount. To a certain extent the occupier gains if this section is put in force, because, as I understand it,—and the Hon'ble Dr. Asutosh Mukhopadhyaya I have no doubt will be able to put me right if I am wrong,—under section 247 (*now 251*) of the Bill the occupier can compel the owner to make the connection; but in that case the occupier has got to pay 12 *per cent.* on the cost of making that connection. But under this section, if the Chairman orders the owner to make the connection, as I read it, the occupier does not have to pay 12 *per cent.* on the cost of making it, so that the occupier gains to that extent at least that he only pays the water-rate, which he probably pays in any case, and not the 12 *per cent.* on the cost of making the connection. It is my intention to vote against this amendment, because I think that the Chairman will undoubtedly exercise a wise discretion in enforcing it. But I must admit that there is a great deal of force in what the Hon'ble Babu Surendranath Banerjee has said. This section is taken bodily from the Public Health Act, but I think there is this great difference between Calcutta and England—that in England there are hardly any stand-posts and the people cannot, as they can do here, readily get good water by fetching it from a short distance. It is very difficult in an English town to get good water otherwise than by a house-connection; but here in Calcutta a man has not got to go far from his house to get water, and he can get such quantity of water as is reasonably necessary for his requirements. I have no doubt there may be circumstances where a man has got a bad well or some insanitary water where it may be desirable to enforce this section, but my belief is that to a very large extent indeed it would be a dead-letter."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—"I should be prepared to support this amendment unless the section is slightly modified in the way suggested in my amendment. My proposition is that in section 252 (*now 253*), line 2, after the word 'building,' the words 'to which the provisions of section 247 (*now 250*) are not applicable' be inserted; in other words, that the provisions of sections 247 and 252 (*now 250 and 253*) be mutually exclusive in their application."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"May I rise to a point of order? We are considering amendment No. 161, and my friend the Hon'ble Dr. Asutosh Mukhopadhyaya may vote in favour of or against it. He is now considering another amendment which refers to a totally different matter."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—"If it is inconvenient to take my amendment now, it will wait its turn; but I thought it would be more convenient to discuss the two together."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"My amendment will take care of itself."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—"If my hon'ble friend is so deeply attached to his own amendment that he is unable to listen to any suggestion however reasonable, I must confess with regret that I cannot at this stage support his motion as framed. My hon'ble friend has pleaded on behalf of the poor with his usual earnestness and eloquence. I can assure him that I yield to none, not even to my hon'ble friend, in my anxiety to afford all possible protection to the poor and the helpless. But at the same time I resolutely decline to be guided by sentiment or to be misled by rhetoric; and I prefer to examine the facts, to scrutinise them with care and caution. In the first place, let us not forget that under section 145 (*now 147*) every rate-payer is liable to pay the maximum water rate if his house is situated within 450 feet of the nearest stand post or other supply of filtered water available to the public. Now the present section, to which such vigorous objection has been taken, authorises the Chairman to enforce compulsory supply of water from the main, only if the building is situated at a distance of not more than 100 feet from the nearest water main. It is manifest therefore that, if action is

taken by the Chairman under section 252 (*now* 253), there is no addition to the recurring charge under section 145 (*now* 147); the only expenses we have to take into consideration will be the cost of fitting up, once for all, the pipes and other appliances, for a distance which can in no case exceed 100 feet. This cannot be under any circumstances a considerable sum, but I am free to admit that there may be poor people in the city upon whom it may tell heavily. At the same time, you must remember that if the owner or occupier is unable to carry out the orders of the Chairman under section 252 (*now* 253), the necessary works will be executed at the cost of the Corporation under section 622 (*now* 599), and the actual expenses may under section 629 (*now* 605) be recovered in instalments spread over a period of five years. Let us take one concrete illustration; if the owner is unable by reason of poverty to execute the necessary works under section 252 (*now* 253) and they are carried out at the instance of the Corporation at a cost of Rs. 50, such amount with interest at 6 per cent. may be recovered from him in instalments spread over five years; so that in such a case each annual instalment cannot exceed Rs. 13, which would be at the rate of a little over one rupee a month. It seems to me, Sir, that these safeguards will be found ample for the protection of the poor, and that there is some tendency to exaggerate the possibility of actual oppression. But even if we concede that these are not sufficient to protect the poor from any possible oppression which may result from a desire on the part of the Chairman to annoy all the poor people in the city by the strict enforcement of the provisions of section 252 (*now* 253); even if we make this assumption, it does not follow in the least that the section should altogether be omitted; the only reasonable inference is that the section should be so modified as to make the oppression of the poor impossible. Do this by every means that can be suggested; restrict if necessary the scope of this section; make it inapplicable to people who are absolutely indigent; but do not omit it altogether. I cannot conceal from myself the fact that this salutary provision is taken from the English Public Health Act, section 62, and that the corresponding rule in England which applies exclusively to the poor has worked satisfactorily. I cannot further disguise the fact that many of my countrymen who are by no means poor are, either by reason of ignorance or negligence, somewhat slow to appreciate sanitary measures; they will often lavishly spend their money in unnecessary comforts, but hesitate to take sanitary precautions; some of them at any rate have to be educated in this respect, and gentle pressure from without is sometimes necessary to protect and improve their health, safety and convenience, and may often lead to a substantial reduction of their doctor's bill."

The Hon'ble Mr. APCAR said:—"May I be permitted to explain with reference to what fell from the Hon'ble Mr. Buckley? One of the circumstances I had in my mind was this, that it is possible the Corporation do not carry out the laying of the water-pipes to the extent that they ought to do, and that they have failed in bringing the pipes as near to tenements as they ought to have done; and if in these circumstances the connection would have to be so long as 100 feet, I do not think it is fair to impose on the householder, who desires connection, to make the connection in such circumstances at his expense. I have in mind that the branch sewers, in the drainage scheme that is now being carried out, have been begun by the executive by a considerable length short of the summit in each street, contrary to the scheme actually sanctioned, and then it will come to this that those who are living at the summit will have to connect, at their own cost perhaps, with the drainage system. This is one of the circumstances why I have thought that it would be hard on owners to be compelled to connect when they will have to pay for the connection."

The Hon'ble Mr. OLDHAM said:—"My only observation is that the amendment has been moved on the assumption that Calcutta is exclusively a Hindu city. On the contrary, it is a very colonial and cosmopolitan city, and it is notoriously the fact that some of the occupants and some of the owners belong to races who do fight shy of water, and the provision is wanted for them at all events."

The Hon'ble BABU BOBKANTA NATH SEN said:—"I support this amendment. This is a provision simply authorizing the Chairman to compel certain classes to have the water-connection. The question is whether this authority should be given to him in this way. As has been observed by the Hon'ble Babu Surendranath Banerjee, people would only be too glad to get the water-connection. The old ideas about the unholiness of pure water have now been abandoned. The question is simply about their capacity to pay for it, and, as has been put forward by the Hon'ble Babu Surendranath Banerjee, that is the only ground which stands in their way, and the question is whether they should be compelled to make the water-connection. There arises a difficulty—the question of the occupier. The section contemplates the case of the owner being required to do the work. In the case in which the owner is the occupier and is poor, the argument of my friend applies in its full vigour and strength; but difficulty may arise, and the force of the argument is considerably taken away when the owner is a rich man and the occupier is not. Questionable then would be the justice of the requisition in that case. The occupier may leave the house, but the connection would improve the value of the house. I submit, Sir, that this provision, which gives an unlimited power to the Chairman to compel a man against his will, should not find a place in our statute."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I cannot but express my surprise—a surprise to which I have already given utterance—at the opinion of the Hon'ble Member in charge of the Bill that we Hindus do not appreciate water."

The Hon'ble MR. BAKER said:—"That is not what I said. I said people in England had appreciated the advantages of good and filtered water for many generations before the people of this country."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I think, Sir, we have learnt to appreciate the advantages of good water for the last 3,000 years. Filtered water we never had. The best water that we can find is the water of the Ganges; and the Ganges an object of reverence and worship with us, because, so to speak, it is an emblem of purity. I think that very fact—the devotion that the Hindus pay to the Ganges—is emblematic of the feeling which they entertain with regard to the importance of good water. I will not, after the explanation which the Hon'ble Member in charge of the Bill has offered, dwell upon that part of his statement."

"But the Hon'ble Member has made an admission, and it is in support of my amendment, that everyone who can afford it will have a house-connection. Therefore it is only the poor who will not have house-connection, and, if so, is it right and proper to force them to make this connection when they adopt the necessary means of taking water from the hydrant? The Hon'ble Mr. Buckley has pointed out that the analogy of the English law is not applicable to this case. But the Hon'ble Member in charge of the Bill professes to base this section upon the English Public Health Act. The circumstances are different, and we have the high authority of the Hon'ble Mr. Buckley in support of this view. So far as this particular matter is concerned, there is absolutely no justification of any kind—not even the apology of a precedent—upon which it can be based. It is not English law—at least the analogy of the English law does not hold good—and yet the Hon'ble Member wants to arm the Chairman with the power of compelling a poor man to have house-connection established."

"Something has been said about the charge not being a recurring charge. I admit that, but, Sir, it will cost the poor man about Rs. 40 or Rs. 50 to have the connection between the main situate at a distance of nearly 100 feet and his house. Am I to understand that Rs. 40 or Rs. 50 is of no consequence to the poor man? Possibly he has never seen Rs. 40 or Rs. 50 in his life. He has never been able to amass that amount. It is a substantial consideration to the poor man, and I must say it is a great hardship to compel him to spend this money when there is no necessity for it. He undergoes the trouble of taking the water from the hydrant. If he had the means, would he undergo this labour and trouble? Here we have considerations based upon the natural impulses of the man which tell against this section. It is because he has not got the means that he has not got the water-connection, and is it right and proper

that he should be forced to have the water-connection when he is able to get water from the hydrant by taking the trouble for it? I do not think that is a right procedure to follow.

"My friend the Hon'ble Dr. Asutosh Mukhopadhyaya was good enough to say that, unless we had a section like this, probably the doctor's bill would swell. The poor of Calcutta for the last 50 years have gone on without a section like this. I do not know that the doctor's bill is at all relevant to the matter, but I will say this that if this section were placed before representatives, say, 50 or 100 or 200, of the Hindu community noted for their habits of cleanliness, intimately conversant with the ways and the feelings of the people, they would say 'no' to this section, and we, as the representatives of the people, echo their sentiments. I desire to record my strong protest against a section of this kind, which is likely to operate with hardship upon a class of people who deserve the special protection of the Government."

The Hon'ble THE PRESIDENT said :—"We will take a vote on this amendment on 22nd instant."

The further consideration of the motion was then postponed.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 252 (now 253), line 2, after the word "building" the words "to which the provisions of section 247 (now 250) are not applicable" be inserted.

He said :—"My suggestion is that the provisions of section 252 (now 253) should not be applicable to buildings to which the provisions of section 247 (now 250) are applicable. The provisions of section 247 (now 250) apply to a building in the occupation of a tenant. I venture to think that when a tenant is in occupation we may leave him to his remedy under sections 247 and 248 (now 250 and 251), and when the owner is in occupation we may apply the provisions of section 252 (now 253); otherwise there might be some inconsistency. Section 247 (now 250) provides that—

"(1) Any occupier of a masonry building who holds the same direct from the owner may, by written notice signed by him, require the owner to provide all such necessary works as may be required for bringing into the premises a supply of filtered water for domestic purposes and a supply of unfiltered water for the purposes specified in section 235E (now 246) sub-section (2).

(2) Every such notice shall contain an undertaking on the part of the occupier—

- (a) to pay, during the residue of his term of occupation, interest at the rate of one per cent. per mensem, calculated from the date of the completion of the works, on the cost of all works so provided by such owner, and,
- (b) if the premises do not abut upon some street in which there is a supply-main, to pay the cost of connecting the premises with the nearest supply-main."

"It is clear, therefore, that, if the occupier wants to have the benefit of the water-supply, he can have it only on certain terms. Under section 252 (now 253), on the other hand, he would be entitled to have the same benefit without the same liabilities. I do not think that is either just or could have been intended. Section 247 (now 250) is taken from the present law, whereas section 252 (now 253) is taken from the English Public Health Act; and this probably explains the anomaly I have just referred to, because I cannot find in the English Public Health Act any provision corresponding to our section 247 (now 250). If the occupier does not think that there is any necessity for water-supply, leave him in that position, for we may be quite sure that, when the occupier absolutely needs water and can get it in at the expense of the owner, he will not lightly miss the opportunity."

The Hon'ble MR. BAKER said :—"I accept this amendment."

The Hon'ble THE PRESIDENT said :—"I should like to ask the Hon'ble Dr. Asutosh Mukhopadhyaya a question. What is to happen in the case in which neither the owner nor occupier proposes to make the house-connection? Under section 247 (now 250) the occupier may insist upon the house-connection being made, but if the occupier does not move, and the owner does not move, and it is a house in which the occupier is a person of ample means, and for sanitary reasons the Chairman wishes to insist upon house-connection. What is to be done if we make this addition here?"

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I am afraid, Sir, I have not made myself clear. My contention is that, if the occupier under section 247 (now 250) is in a position to get the benefit of the water-supply at the cost of the owner, he is not likely to lose the benefit. We may take it practically that if he needs the thing and can get it at the expense of the owner he will at once have recourse to section 247 (now 250); the difficulty pointed out is not likely to arise in practice. I must admit, however, that, if the case does arise, the section, as I propose to restrict it, will not supply an adequate remedy."

The Hon'ble MR. BOLTON said:—"I am afraid difficulty will arise, because it may frequently not suit the occupier to press the landlord under section 247 (now 250). He may hold on such a tenure that the landlord may be able, if he is threatened with a heavy expenditure under this section, to eject him from the house, or to cause him to leave it subsequently. The occupier will not always be free, even when he needs the water, to take recourse to this section. It is advisable, therefore, that the power of the Chairman under section 252 (now 253) should not be restricted as proposed by the Hon'ble Member."

The Hon'ble MR. BAKER said:—"As I understood this matter when I discussed it with the Hon'ble Dr. Asutosh Mukhopadhyaya, he was afraid that occupiers would try in some manner or other to get action taken under section 252 (now 253) instead of section 247 (now 250), because, if they act under section 247 (now 250), they have to pay for it, whereas if they take action under section 252 (now 253), they then escape payment because the owner has to pay in the first instance."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"It seems to me inconsistent that it should be open to the occupier to proceed either under section 247 (now 250) or under section 252 (now 253), and obtain the same relief in either case upon very different terms. If he proceeds under section 247 (now 250), he has to pay for the benefit he receives, whereas, if he has recourse to section 252 (now 253), he can compel the owner to execute the necessary work without ever paying anything for it. This is so manifestly unjust that, but for what has fallen from one Hon'ble Member, I should have thought the position absolutely unsustainable. If the Council is of opinion that the Chairman should be entitled to proceed under section 252 (now 253) whether the building is in the occupation of the owner or of the tenant, then I venture to think that section 252 (now 253) will have to be redrafted to make the provision harmonious with section 247 (now 250)."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I can suggest a way out of the difficulty, and that is to omit this section altogether."

The Hon'ble MR. BUCKLEY said:—"If the Hon'ble Member will look at the Public Health Act, he will see that the intention was that this power to have the water-connection is only to be exercised in the case of very poor people: special mention is made of persons who can only pay two pence a week."

The motion being put, the Council divided as follows:—

Ayes 7.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Dr. Asutosh Mukhopadhyaya.
The Hon'ble Mr. Mackenzie.
The Hon'ble Sahibzada Mahomed Bakhtyar Shah.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.

Noes 11.

The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee, Bahadur.
The Hon'ble Raja Ranajit Sinha Bahadur, of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Mr. Spink.
The Hon'ble Khan Bahadur Maulvi Delawar Hosain Ahmed.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the motion standing in his name, that at the end of section 252 (*now 253*) be added "within a time, not less than thirty days, to be specified in such notice."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, also withdrew the motion, standing in his name, that to section 252 (*now 253*) the following paragraph be added:—

"If such notice is not complied with within the time to be specified, the Chairman may, if he thinks fit, execute such work and obtain such supply, and any expenses incurred by him in this behalf may be recovered from the owner as if it were an arrear of consolidated rate due from him."

He said:—"Apparently these two amendments are substantially covered by the provisions of section 622 (*now 597*) of the Bill."

The Hon'ble THE PRESIDENT said:—"There are a number of amendments of the Hon'ble Member on later sections, all in the same terms."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"They will be withdrawn when we come to them."

The Hon'ble THE PRESIDENT said:—"We postponed amendment No. 161* just now, but the Hon'ble Member in charge of the Bill has spoken to me about the matter and he will make a statement."

The Hon'ble MR. BAKER said:—"The Hon'ble the President has suggested that a proviso to the following effect be added to section 252 (*now 253*):—

"Provided that no action shall be taken under this section in any case in which the owner satisfies the Chairman that he is too poor to bear the cost of the said works."

"The object of that proviso is to give effect to what must be the real fact in any case. If the owner of the premises is too poor to bear the cost of making the water-connection, it is quite certain that the Chairman cannot and ought not to enforce the provisions of the section. This amendment merely gives statutory effect to that limitation. Therefore, with Your Honour's permission, I move that this addition be made to the section."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I thankfully accept this, and I withdraw my amendment No. 161* in favour of the proviso to section 252 (*now 253*)."

The Hon'ble MR. BAKER's motion was then put and agreed to.

SECTION 262.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 253A (*now 262*), for the words from "he may replace them" to the end of the section, the following be substituted:—

"he may, by written notice, require the owner of the premises to replace or improve them, and if the owner fails to make the necessary alterations within seven days."

He said:—"With reference to this motion, I have placed myself in communication with the Hon'ble Member in charge of the Bill; he accepts the principle, but suggests that the wording should be slightly modified; the section as re-drafted will read as follows:—

"If any pipes, taps, works or fittings connected with the supply of unfiltered water for the flushing of privies or urinals in any premises be found, on examination by the Chairman, to be defective, he may, by written notice, require the owner of the premises to replace such fittings or to make such alterations therein as may be specified in the notice."

"Section 253A (*now 262*) as it stands apparently authorises the Chairman, as soon as he discovers that pipes, taps, works or fittings are defective, to replace them at once without notice to the owner, and without even giving

* The section 262 (*now 263*) be omitted—*vide* page 317, *supra*.

him an opportunity to carry out the necessary works. That could not have been intended. If you look at other parts of the Bill, you will find that in similar cases a written notice is given in the first instance to the owner, requiring him to carry out the necessary alterations, and it is only when he fails to do so that the Chairman takes action; this is reasonable and my amendment in substance is to that effect."

The Hon'ble MR. BAKER said:—"I accept the amendment. It has been considered by Mr. Buckley and myself, and we think that in this form it is open to no exception."

The motion was put and agreed to.

SECTION 269.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 254E (now 269), sub-section (1), the words "situated in a block in which the continuous system is in force" be omitted.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that sub-section (3) of section 254E (now 269) be omitted.

He said:—"Section 254E (now 269) is a new section; I confess, Sir, that I was somewhat puzzled as to what the object was, and my only endeavour is to give effect to what seems to me to be the intention of the framers of the law. Section 254E (now 269) has for its object the prevention of waste of filtered water only under the continuous system. It says:—

"(1) Whenever the Chairman has reason to believe that filtered water supplied to any premises situated in a block in which the continuous system is in force is being wasted, he may, by written notice, require the owner and occupier of the premises, within a period of four days after service of the notice, to repair and make good any defects in the pipes, taps or fittings connected with the water-supply, so as to put a stop to such waste.

(2) If any notice issued under sub-section (1) is not complied with, and the Chairman has reason to believe that waste still continues, he shall cause to be served on the said owner and occupier a further notice informing them that, if the first notice be not complied with within a further period of three days, the supply of filtered water to the said premises will be cut off.

(3) If, after the expiration of the said period of three days, the Chairman has reason to believe that waste still continues, he shall cut off the supply of filtered water to the said premises.

Explanation.—For the purposes of this section, water shall not be deemed to be wasted if it is shown that it has been deliberately and purposely drawn for use for domestic purposes from a tap provided for the purpose."

"The section, therefore, by its very terms applies only to premises situated in a block in which the continuous system is in force. It does not apply to premises situated in a block in which the intermittent system is in force. It may appear at first sight that this latter case is regulated by the preceding section, which provides as follows:—

"(1) No occupier of any premises to which water is supplied under this Chapter shall negligently or otherwise suffer such water to be wasted, or shall suffer the pipes, taps, works and fittings for the supply of water, or any of them, to remain out of repair to such an extent as to cause a waste of water.

(2) No person shall cause a waste of water by the misuse of public stand-posts, drinking-fountains or hydrants."

"This apparently applies to all buildings whether the system in force is continuous or intermittent. But, unfortunately, the prohibition is not completely effective, inasmuch as the penalty for the infraction of the law is not sufficiently severe. You will remember that section 602 (now 574) provides a penalty for the first commission of an offence, while section 603 (now 575) provides a recurring penalty for the repetition of the same offence. Unfortunately section 254D (now 268) is not mentioned in section 603 (now 575); so that, where the intermittent system is in force, if there is wilful waste of water, under section 254D (now 268), sub-section (1), and section 602 (now 574), the occupier may be fined Rs. 50. But, once he pays the penalty, he is secure; he

can with impunity waste as much water as he pleases. There is, however, another section which has an important bearing on the present question; I mean section 265C (*now* 283), which provides as follows:—

‘265C (*now* 283). (1) The Chairman may cut off the connection between any water-works of the Corporation and any premises to which water is supplied from such works, or may turn off such supply, in any of the following cases, namely—

- (a) if the premises are unoccupied;
- (b) if (in the case of a *bustee*) the owner or (in any other case) the occupier of the premises fails, for fifteen days after the due presentation of a bill or the due service of a notice, to pay any sum due to the Corporation from him or in respect of such premises;
- (c) if, after receipt of a written notice from the Chairman requiring him to refrain from so doing, the owner or occupier of the premises continues to use the water, or to permit the same to be used, in contravention of this Act or any rule or bye-law made hereunder;
- (d) if the occupier of the premises contravenes section 225D (*now* 245) or sub-section (2) of section 254Q (*now* 279);
- (e) if the occupier refuses to admit the Chairman into the premises for the purpose of making any examination or inquiry authorised by section 253 (*now* 261), or prevents the Chairman from making such examination or inquiry;
- (ee) if the owner of the premises fails to comply with any notice issued under section 253B (*now* 263);
- (f) if the owner or occupier of the premises wilfully or negligently injures or damages his meter or any pipe or tap conveying water from any works of the Corporation; or
- (g) if any pipes, taps, works or fittings connected with the supply of water to the premises be found, on examination by the Chairman, to be out of repair to such an extent as to cause a waste of water:

Provided as follows:—

- (a) water supplied for flushing privies or urinals shall not be cut off or turned off;
- (b) water shall not be cut off or turned off in any case referred to in clause (b) or clause (g) [*now* (h)] unless written notice of not less than twenty-four hours has been given to the occupier of the premises.

(2) The expense of cutting off the connection or of turning off the water in any case referred to in sub-section (1) shall be paid, in the case of a *bustee*, by the owner of the premises, and in any other case by the owner or occupier of the premises.

(3) When all moneys, for the non-payment of which water has been turned off or cut off from any premises under clause (b) of sub-section (1), have been duly paid to the Corporation, together with the expense of cutting off or turning off the water, the Chairman shall cause water to be supplied to such premises as before.

(4) If any money, for the non-payment of which water has been cut off or turned off from any premises under clause (b) of sub-section (1) was due from the owner of the premises and is paid by the occupier, the occupier may deduct the amount thereof from the rent of the premises, together with the expenses paid by him under sub-section (2).

(5) No action taken under or in pursuance of this section shall relieve any person from any penalties or liabilities which he may otherwise have incurred.

“This section, as I understand it, applies to both the continuous and the intermittent system; in other words, the object which is intended to be secured by section 254E (*now* 269), is also secured by section 265C, clause (g) [*now* section 283, clause (h)]. Unfortunately, however, the two sections, though they partially overlap each other, prescribe different procedures. This is certainly anomalous, and my amendment seeks to remove this defect by a very simple means. I suggest that section 254E (*now* 269), like section 265C (*now* 283), should apply to both systems, and that the same procedure should be followed in both cases to prevent the wilful waste of water. I sympathise entirely with the object of these sections, but I desire to render them harmonious, and thus to make them intelligible and easy of application. I need hardly add that when you have sections so clumsily worded as these, and even contradictory to each other, you do your best to defeat the very object you have in view.”

The Hon'ble Mr BAKER said:—“This is a very technical matter, Sir, and I think the Hon'ble Mr. Buckley will deal with it more effectively than I can; but I will just explain, as well as I can, what the position is. The

continuous system is not in force now in Calcutta at all. It is going to be introduced, but it will be introduced gradually, and it will take from five to seven years before it is extended fully. We thought it desirable to have a general section relating to waste and to the power of cutting off water in the circumstances which now prevail in Calcutta. These powers are provided in section 254D (*now* 268) and in section 265C (*now* 283). We also thought it desirable to have a separate section dealing comprehensively with the measures for preventing waste under the continuous system only, and those measures are all gathered together in section 254E (*now* 269). I think the Hon'ble Mr. Buckley will probably say, with reference to the proposal to omit the words 'situated in a block in which the continuous system is in force,' that until the continuous system has been introduced it is a matter of great difficulty to know for certain whether waste is being committed or not, and that is one reason why I should demur to leaving out those words and to extending the provisions of section 254E (*now* 269) to the existing state of things in Calcutta, which would probably lead to practical difficulty and possibly to great hardship.

"Then, Sir, I would point out that the operation of section 254E (*now* 269) is limited by the explanation. In the explanation to that section a definition is given of the term 'waste,' and that applies only where the continuous system is in force. The term 'waste,' as understood by water-works engineers in Europe, does not include any water which is deliberately drawn off from the taps by the occupiers of houses. It does not matter what they do with the water which they intentionally draw off from a tap, or whether they let the tap run. That is not to be deemed waste. It means leakage. 'Leakage' is the sense in which the word 'waste' is used for this purpose. It is in the case of leakage that the provisions of section 254E (*now* 269) will be applicable.

"Then, Sir, the Hon'ble Dr. Asutosh Mukhopadhyaya said that under proviso (b) of section 265C (*now* 283) a notice of 24 hours has to be given before the water could be cut off under clause (g) [*now* (h)], and he thought it was not intended that that proviso should only apply in the case of the intermittent system, and that it was not intended to apply to the continuous system; but, if he looks at section 254E (*now* 269), he will see that much more notice than that is required under the continuous system. This matter was very fully discussed in the Select Committee. I think the Hon'ble Babu Surendranath Banerjee will remember. We wanted at first to have, I think, 48 hours' notice, and that was fully considered, and the two gentlemen who represented the Corporation urged that so short a period would be rather a hardship. We therefore extended the period to seven days, and we split it into two parts, which are provided for in clauses (1) and (2) respectively. Therefore under the continuous system there is notice of seven days, and not of one day. It is quite true, as the Hon'ble Member has pointed out, that this section gives the power to cut off the supply. It does overlap the power given in section 265C (*now* 283). I admit that that is so, but we thought for practical purposes it is desirable, even at the risk of some apparently bad drafting, to have this double provision. The whole of the powers that we take in respect of the continuous system are conveniently gathered together in section 254E (*now* 269). The other section applies to the intermittent or existing system only."

The Hon'ble Mr. BUCKLEY said:—"I think, Sir, it would be a pity, although perhaps from a legal point of view it might not be symmetrical, if the Bill was altered as the Hon'ble Dr. Asutosh Mukhopadhyaya suggests. Section 254E (*now* 269) is intended to apply only and entirely to the continuous system, and perhaps I may briefly describe to the Council why we wish to deal differently with the two systems. The Hon'ble Member wishes to make the two the same. The continuous system affords the most ingenious and simple way of discovering waste, and not the least advantage of that system is that it enables that waste to be detected with almost absolute accuracy, with hardly any inquisitorial enquiry at all in the houses of the people; and I must say it will be of very great advantage in Calcutta. At present, and under the operation of section 254D (*now* 268), it is only possible to find out whether waste is going on by actually going into the house and seeing whether the pipes or the taps are leaking, and that, as we

all know, is a most unpleasant form of investigation. Under the continuous system there will be to each house a small stop-cock, that is, a tap outside the house and outside the premises altogether. That stop-cock will be accessible to the water-works authorities, and they will be able to turn it off or to get to it without going to the householder at all. When water is continuously supplied, as it will be when this Bill is fully in force, the pressure is on all day and all night in every house, and at any moment of the whole 24 hours any person can go and get as much water as they like. That is one great advantage of it. Experience at home has shown that people draw the largest quantity of water from about 8 to 10 o'clock in the morning. There is a certain amount of draught which goes on the whole of the rest of the day: but between certain hours of the night, generally from about 2 o'clock in the morning to 4 o'clock in the morning, as we can all quite understand, nobody draws any water at all, or very few indeed. Consequently, if you go at those hours of the morning and have any means of ascertaining whether water is being drawn into a house, you can ascertain, supposing a person is not drawing it deliberately, whether waste is going on or not. What is actually done in England is this: a man goes to the house between those hours, and he goes to that stop-cock, and he has with him what he calls a stethoscope. It is nothing less than a plain steel rod. He puts one end of it at the top of the tap of the stop cock and the other end to his ear. If any person does happen between those hours to be drawing off water, he knows it at once, because he hears a considerable sound. If any tap is opened he can distinguish it, but if no water at all is passing he will hear nothing; but if the taps in that house are leaking, even to the smallest extent, he can hear even, I am told, the very smallest quantity. He can distinguish it trickling through, and if he turns the stop-cock off a little, so as to ease the discharge, he can still hear it, and I am told that the Inspectors who go to make these enquiries are able to tell with extreme accuracy how much water a minute is passing in listening with this stethoscope to the flow of water through the stop-cock. Now, Sir, that cannot be done now, because the water in Calcutta is turned on for some hours at a high pressure, some hours at a low pressure, and some hours not at all. When the continuous system is in force it will be easy to do this, and it will be easy for all the municipal Water-works Inspectors to find out when anybody is really wasting water; and I do not hesitate to say that if they could do that to-morrow they would find out that a great quantity of water is wasted in every house in Calcutta. Consequently in section 254D (now 268), which applies to the present system, the intermittent supply, we have practically in this Bill made no difference from the existing law. We have left things as they are. We do not think we can improve it, but in section 254E (now 269), where with great accuracy we can say whether water is wasted, we apply a rigid system. We first of all, as soon as the Inspector has found that water is being wasted, send the occupier a notice giving him four days to repair his defective fittings: if he does not do that, three days more grace is allowed him; and if he will not put things right, then we then cut the water off entirely; and I think that procedure is the best one that it is possible to follow. I do not think it would be desirable to amalgamate the two systems. Although there is a little overlapping and a little technical superfluity perhaps in the law, I would ask the Hon'ble Dr. Ashutosh Mukhopadhyaya to allow the section to stand. I am quite sure that, if this system is applied, as I think it will be applied, with care and discretion, but with great inflexibility, it will result not only to the great advantage of the people, but to the material diminution of the cost of the water-supply. By the introduction of this system in Liverpool no less than £53,000 in actual hard cash was saved in one year, and I think it would not be very difficult to show that the Municipality by failing to adopt some such system as that contemplated by the Bill—which they have full authority to do under the existing law—have wasted an enormous sum of the rate-payers' money."

The Hon'ble Dr. ASHUTOSH MUKHOPADHYAYA, in reply, said:—"As my hon'ble friend who spoke last thinks that the object which both of us have in view will be best secured by leaving the section in its present form, which is confessedly inelegant and unsymmetrical, I will not press these amendments."

The motions were then, by leave of the Council, withdrawn.

SECTION 270.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 254F (now 270), sub-section (3), the words "or sub-section (2)" be omitted.

He said:—"This is really a mere matter of drafting. Under section 254F (now 270), sub-section (1),—

'If the Chairman has reason to believe that the occupier of any premises consumes more filtered water than he is entitled to under section 226 (now 248), the Chairman may provide a water-meter, and attach the same to the service-pipe of the said premises.'

"By sub-section (2)—

'If the occupier of any premises situated in a block in which the continuous system of supplying filtered water is in force makes a written application to the Chairman to have a water-meter attached to the service-pipe of the premises, the Chairman shall, within fourteen days from the receipt of the application, provide a meter and attach it to the said pipe.'

"And sub-section (3) provides that—

'The expense of providing and attaching a meter under sub-section (1) or sub-section (2) shall be paid out of the municipal funds.'

"Sub-section (4) goes on to say that—

'When a meter is to be attached under sub-section (2) on the application of the occupier of any premises, he shall, either—

- (a) before the meter is attached, deposit with the Corporation the sum required for providing and attaching the meter, or
- (b) pay rent for the meter at such rate as may be fixed by the Chairman with the sanction of the Local Government.'

"This indicates that the applicant is to bear the expenses, which seems to contradict the provisions of sub-section (3). The object of my amendment is to make the two sub-sections harmonise with each other."

The Hon'ble MR. BAKER said:—"I do not agree with my hon'ble friend Dr. Asutosh Mukhopadhyaya. This was debated a good deal in Select Committee, and the conclusion we came to was that the cost was to be borne by municipal funds, and I think that is the effect of the section. It is quite true that when an occupier asks to have a meter he is allowed as an alternative to deposit the cost of providing and attaching the meter, but that money is only on deposit, and it is provided in sub-section (5) that it is to be returned to him: therefore that cost does not fall upon him, but on the municipal funds, which was the deliberate intention of the Select Committee. I think the words in the section are right."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"After this explanation, I will not press this amendment."

The motion was then, by leave of the Council, withdrawn.

SECTION 271.

The Hon'ble BABU SURENDRANATH BANERJEE's motion that the word "five" be substituted for "four" in line 4 of section 226 (now 248) having been lost,* he, by leave of the Council, withdrew the motion, standing in his name, that the word "five" be substituted for the word "three" in line 6 of section 254G (now 271).

The Hon'ble BABU SURENDRANATH BANERJEE moved that the word "four" be substituted for the word "three" in line 6 of section 254G (now 271).

The Hon'ble RAJA BAHADUR RANAJIT SINHA, of NASHIPUR, also moved that the word "four" be substituted for the word "three" in line 6 of section 254G (now 271).

* Vide pp. 308 to 312, *supra*.

The Hon'ble BABU SURENDRANATH BANERJEE said :—"If the water supplied is in excess of the quantity allowed by law, I suggest that the water should be supplied at the rate of 4,000 gallons per rupee. You give the water at present at that rate, and, if it is in excess of the quantity allowed, there is no reason why you should not observe the same rate unless you want to inflict a punishment. So far as the supply of water is concerned, considerations of punishment ought not to come in at all. It is one of the greatest necessities of life in a town like Calcutta, and I hope, Sir, that, if water is supplied in excess of the 4,000 gallons to the rupee, the same rate would be observed in regard to the excess supply. I think that is fair."

The Hon'ble MR. BAKER said :—"I cannot accept the Hon'ble Member's amendment. If the statutory supply is fixed at 4,000 gallons to the rupee, then a higher rate ought to be charged on any water which is taken in excess of that statutory allowance. The water is not sold to the public at all. The water-rates are the proceeds of a tax. All people are taxed, whether they have house-connections or not, and the statutory supply is fixed on the assumption that each person will receive a certain fixed amount. If any person takes more than that amount, he reduces *pro tanto* the supply of water available for other people, and it is necessary to discourage that by every legitimate means. Therefore, any water which he takes over and above the amount which he is entitled to and which is sufficient for him, he ought to pay for, not at the original prime cost, but at an enhanced rate. I may add that the British Indian Association, who are much interested in the matter, in their representation to the Council have expressly approved of that principle."

The Hon'ble MR. BUCKLEY said :—"I quite agree in the remarks made by the Hon'ble Mr. Baker, and I wish to add this further argument. There is reason to believe that the people who most largely exceed in their consumption of more water than they are entitled to are those who are best off—the men of wealth. Under the section of the Bill which has to-day been approved by the Council, any large houses which are assessed at high rates, and which are presumably occupied by the wealthiest people, will very often be entitled to as much as 60 or 70 gallons per head per day—an utterly preposterously large amount, especially when you consider that in those large houses there are a great many dependents who will not use anything like that quantity. I think it is perfectly right in the interests of everybody, especially in the interests of the Municipality, that the wealthy, if they choose to take more water than they can reasonably be expected to require, should pay a high price, and, so far from reducing the price, I should be disposed to make it even higher."

The Hon'ble RAJA BAHADUR RANAJIT SINHA OF NASHIPUR said :—"My amendment is identical with that of my hon'ble friend Babu Surendranath Banerjee, and I would ask that they be taken together. When the cost price of 1,000 gallons of water is only three annas, Sir, I do not think it is unreasonable for us to ask 4,000 gallons per rupee."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said :—"I should like to say a few words with reference to what has fallen from the Hon'ble Mr. Buckley. The consumption of water will not depend upon the wealth of the person. It will depend upon the number of members of his family. If a man has a large family, he will consume a larger quantity of water than another man who may be much wealthier than himself but has a smaller family. Therefore, you have to look at the matter from this point of view, *viz.*, that the consumption of water is not determined by considerations of wealth, but is largely dependent upon the number of inmates he may have who live in the same house, and we have got a proverb in our language, which perhaps I may be permitted to quote. We say that where the goddess *Lakshmi* is absent, there the number of children is predominant, that is to say, the poorer the people, the more likely are they to have a numerous family. The point which I want to lay before the Council is this: that the consumption of water is not determined by considerations of wealth, but it depends upon the number of people who live in the same family; and if a man happens to be poor and he

has a large number of people in the same house, he would require a much larger quantity of water than the richer man would.

"Then, Sir, I proceed upon the analogy of the present law. The present law lays down that water is to be supplied at the rate of 3,000 gallons to the rupee, and on any excess of the statutory allowance the same rate is to be observed. If any body wants the water, he pays for it at the rate of 3,000 gallons to the rupee. You have already, Sir, legislated that the water which is to be given to a rate-payer to be 4,000 gallons to the rupee, and following that analogy you ought to give 4,000 gallons to the rupee for the excess supply.

"Section 155 of the existing law provides that :—

'The occupier of every house connected with the water-supply shall be entitled to have, free of further charge, three thousand gallons of filtered water for every rupee paid to the Commissioners as water-rate on account of such house, to be supplied from the service pipes of the Commissioners for domestic use, through a ferrule of the size prescribed in the ninth schedule. If the Commissioners have reason to believe that the occupier of any house consumes more filtered water than he is entitled to as aforesaid, it shall be lawful for the Commissioners to provide a water-meter at their own expense and attach the same to the water-pipes of the said house; and any water which may be used over and above the quantity to which the occupier is entitled as aforesaid, shall be paid for by him at the rate of one rupee for every three thousand gallons.'

"You have allowed to the occupier 4,000 gallons per rupee, and therefore I think you ought to follow the analogy of the present law, and say that the water to which he shall be entitled in excess of the statutory allowance shall be at the rate of one rupee per every 4,000 gallons. I follow the analogy of the present law, and I think my hon'ble friend the Member in charge of the Bill ought not to object."

The Hon'ble Mr. OLDHAM said :—"I think the Hon'ble Babu Surendranath Banerjee has introduced some new matter in his reply, to which I should like to have permission to reply. He has referred to the provisions of the existing law as regards the meter system. I believe the facts are that that provision has never been applied, and no meter has ever been used in Calcutta except privately, whereas this law will be strictly applied."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"The meter is only a means of ascertaining the quantity of water."

The Hon'ble Mr. OLDHAM said :—"It has never been enforced."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"The principle under the present law is that you give 3,000 gallons for the rupee, and when you give anything in excess of the statutory allowance you follow the original principle of 3,000 gallons for the rupee. I ask the Council to endorse the principle which is to be found in the existing law as regards the excess."

The motions being put, the Council divided as follows :—

Ayes 6.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatin Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Bai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Delawar
Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

SECTION 276.

The Hon'ble BABU SURENDRANATH BANERJEE moved that after the word "evidence" in line 4 of sub-section (2) of section 254M (now 276), the following words be inserted:—

"until the contrary has been proved."

He said:—"I understand this is merely a question of drafting, and in order to make the matter quite clear I suggest the insertion of the words 'until the contrary has been proved' or 'until it has been rebutted.'"

The Hon'ble MR. BAKER said:—"I think the section as it stands is quite clear. That is the way in which similar provision is ordinarily made in Acts of the Legislature. We say that it shall be evidence. We do not say that it shall be conclusive proof: therefore, it means that it may be rebutted."

The motion was then, by leave of the Council, withdrawn.

SECTION 278.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for sub-section (1) of section 254P (now 278) the following be substituted:—

"Whenever the Corporation consider that the supply of filtered water to Calcutta is more than sufficient to provide for the requirements thereof, they may, subject to such terms and conditions as they may think fit, consent to deliver such quantity of filtered water *per diem* as they may think fit into reservoirs or pipes placed in—"

and that sub-section (2) be omitted.

He said:—"This is a matter of considerable importance. But may I be permitted, in substitution of the amendment which I have just moved, to move the amendment which has been prepared by the Hon'ble Member in charge of the Bill and which I accept, and which, I think, will be a solution of the difficulty, and I am thankful to him for it. It is that, for section 254P (now 278) the following be substituted, namely:—

'254P (now 278). (1) The Corporation may at any time, on receiving an application from the Municipality or Cantonment concerned, direct, by resolution, that such quantity of filtered water *per diem* as may be specified in the resolution shall be delivered into reservoirs or pipes placed in—

Supply of filtered water to adjacent Municipalities and Cantonments.

(a) any of the following municipalities or cantonments:—

Municipalities.

Barnagore.
Cossipore-Chitpore.
Garden Reach.
Gerulia.
Kamarhati.
Maniktola.

North Barrackpore.
North Dum-Dum.
South Barrackpore.
South Dum-Dum.
South Suburban.
Titagar.

Cantonments.

Barrackpore

Dum-Dum; or

(b) any municipality which is hereafter formed by subdividing any municipality mentioned in clause (a), or by uniting into one municipality any of the municipalities mentioned in that clause; and that for all water so delivered payment shall be made at such rate, not being less than the actual cost to the Corporation, as may be prescribed in such resolution.

(2) An appeal shall lie to the Local Government from any refusal by the Corporation to pass any such resolution, or from any direction given by the Corporation in any such resolution.

(3) Before deciding any such appeal, the Local Government shall consider any representation made by the Corporation with reference thereto.

(4) No order made on any such appeal shall direct the delivery of water at a lower rate of payment than the actual cost to the Corporation.

(5) Every order made by the Local Government on any such appeal shall be final.

"This is a great departure from the provision in the Bill, which took away the power entirely from the Corporation. That provision laid down

that, when the Local Government should be of opinion that the town of Calcutta had more than an adequate supply of water, the Local Government might direct the Corporation to extend the supply of water to certain municipalities specified in that section, and then it would be the duty of the Corporation forthwith to carry out that order, and, furthermore, the price at which the water was to be given to these various municipalities was also to be determined by the Local Government. Under the amended section, the power is left in the hands of the Corporation in the initial stage. The Corporation is to determine the question as to whether water is to be given to these municipalities or not. The Corporation is to determine the price at which the water is to be given, and the only power which the Government assumes in this connection is that, if the municipality which has made the application is dissatisfied with the order of the Corporation, then it may make an application to the Local Government, and the Local Government is to pass final orders. The discretion of the Local Government is fettered by the consideration that the Local Government is not to award any cost which shall be below the cost price to the Corporation of the water to be supplied. Having regard to the very considerable concession which has been made by the Hon'ble Member in charge of the Bill in modifying this section of the Bill, I have great pleasure in laying it before the Council, and I hope it will be unanimously accepted."

The Hon'ble MR. BAKER said:—"I accept the amendment. It has been prepared by me and the Secretary after much consideration, and I think it affords a very fair compromise of a matter about which there was a great deal of ill-feeling and contention. In framing this section, I have proceeded on the analogy of the section which enables adjacent municipalities to connect their sewers with the Calcutta municipal drains. In that connection we have provided that in the first instance the matter shall be determined between the Corporation and the local municipality concerned, and, in the event of disagreement, that an appeal shall lie to the Local Government, whose orders are to be final. That is the principle which has been adopted here, and I beg therefore to support this amendment."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"The provisions of section 254P (*now* 278), as it stands in the Bill, are subject to a very important qualification, namely, before filtered water is supplied to adjacent municipalities and cantonments, it must be ascertained that the supply is sufficient to provide for the requirements of Calcutta. In the section which is proposed to be substituted, there is no similar restriction. I presume, however, that it is not intended to alter the law in this respect, and I shall be glad to be assured that the omission is not intentional."

The Hon'ble MR. BAKER said:—"The reason is that in the former case the matter rests with the Corporation."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The discretion is the discretion of the Corporation. The Corporation may determine, and therefore the Corporation will arrive at a determination after the consideration of the facts of the case. If the Corporation is of opinion that it has not an adequate supply of water at its disposal to extend to other municipalities, the Corporation will say 'no' to any application of that kind. I think the point is met by the discretion which is vested in the Corporation."

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, said:—"I support the amendment. If it is accepted, I shall be glad to withdraw my amendment that the words 'on the recommendation of the Corporation' be inserted after the word 'considers' in line 2 of section 254P (*now* 278). When with the money of the rate-payers water-works are constructed and the water-supply is still maintained, I think it but right that their representatives ought to have a voice in the determination whether or not water should be given to a neighbouring municipality, and, if so, at what rate, and I think the Corporation is the best authority to inform the Government if the water-supply in Calcutta is more than sufficient for the wants of the inhabitants of the town itself."

The Hon'ble Mr. BUCKLEY said:—"If there is one fact which is more striking than another in connection with the continuous system of water-supply which it is proposed to introduce into Calcutta, it is that a constant supply in lieu of an intermittent supply actually reduces the demand. This fact will, I think, remove a great deal of the difficulty in accepting this amendment. When you establish a continuous supply in any town, it enables people to get as much water as they want and at whatever time they want it, and, when that is done, there will be less waste and actually less water used. Hon'ble Members may hesitate to believe that this can really be true. I had a statement compiled for the information of the Select Committee, which refers to twenty-five towns in Great Britain, and in every case it was found that the result of introducing the constant supply, with a proper system of check, has been that the reduction in the consumption has been very large. In many cases the quantity of water has been reduced by one-third and one-half without any compulsion, or penal rate, being imposed. The people do it of their own accord. I feel confident that if the constant-supply system is introduced in Calcutta, with a proper system of check, there will be a saving of money, and there will be a saving of water, which can be sold with advantage to neighbouring municipalities."

The motion was then put and agreed to.

The last motion having been agreed to, the Hon'ble RAJA RANAJIT SINHA, BAHADUR, OF NASHIPUR, by leave of the Council, withdrew the motion, standing in his name, that the words "on the recommendation of the Corporation" be inserted after the word "considers" in line 2 of section 254P (*now* 278).

The Hon'ble BABU SURENDRANATH BANERJEE also, by leave of the Council, withdrew the motion, standing in his name, that for the last three lines of sub-section (2) of section 254P (*now* 278) the following be substituted:—

"as may be determined by the Corporation."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also, by leave of the Council, withdrew the motion, standing in his name, that in section 254P (*now* 278), sub-section (1), line 3, for "Calcutta," be substituted "the area to which the present Act is applicable."

The Hon'ble BABU JATRA MOHAN SEN also, by leave of the Council, withdrew the motion, standing in his name, that in section 254P (*now* 278), sub-section (2), line 3, the words "ten per cent. over" be inserted after "less than."

SECTION 279.

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, moved that after sub-section (2) of section 254Q (*now* 279) the following be added:—

"Provided that this sub-section shall not apply to water taken by travellers for use on a journey."

He said:—"This is a simple matter. The object of my amendment is to secure a clear provision in the matter which is also in practice now. If a person who resides in Calcutta or visits it on some business at the time of leaving Calcutta carries some water for his use during journey, I do not think it will involve any appreciable loss to the municipality. Practically it is now done, and will be done in future, and no one will be able to check it; so I think it is better to make a clear law in the matter."

The Hon'ble Mr. BAKER said:—"It was never intended to prevent a person who is going on a journey from taking a small quantity of drinking-water with him. I think this amendment is hardly necessary; but, if the Hon'ble Member presses it, I will not object."

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, in reply, said:—"I thought a clear provision on the subject was necessary."

The motion was then put and agreed to.

SECTION 283.

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, moved that clause (b) of sub-section (1) of section 265C (*now* 283) be omitted.

THE Hon'ble BABU SURENDRANATH BANERJEE also moved that clause (b) of section 265C (*now* 283) be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that, if the last amendment be lost, the following should be substituted for clause (b) of section 265C (*now* 283):—

“(b) if (in the case of a *bustee*) the owner, or (in any other case) the occupier of the premises fails, for fifteen days after due service of a notice, to pay any sum due to the Corporation on account of the consolidated rate from him or in respect of such premises.”

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, said:—“This section gives power to the Chairman to cut off the water-supply to any house for non-payment of any sum due to the Corporation. As the law gives ample powers to the Chairman for the prompt recovery of municipal dues, I do not find there is any necessity for the insertion of this clause. If the water-supply of a house be cut off, the health of the residents of the house would suffer. In my opinion, therefore, this provision of the Bill should be omitted.”

The Hon'ble BABU SURENDRANATH BANERJEE said:—“I have a similar amendment in my name, and I entirely agree with my hon'ble friend that this provision is unnecessary. The powers of distraint and sale with which the Corporation is armed are amply sufficient for all purposes, and this power with which the officers of the Corporation are armed to cut off the water-supply is seldom resorted to, except in extreme cases. If it is found necessary to have some provision of this kind, the existing law supplies us with it. I would call the attention of the Council to section 162 of the present Act, in order to show the difference between the present law and the law which it is proposed to enact under the provisions of this Bill. Under the existing law,—and I have already observed that the existing law is not usually enforced,—all the power which the Executive possess is this, that if default is made only in respect of one rate, namely, the water-rate, then, and then only, are the Executive entitled to cut off the water-connection; but under this Bill the Chairman may cut off the water-connection if the occupier fails for 15 days after due presentation of a bill not only for the water-rate as in the existing law, but for *any* sum due to the Corporation, not in respect of the premises concerned only, but in respect of any other premises belonging to the same person. Therefore in this Bill we have an amplification of the present law. Moreover, that law is not always resorted to. If it could be shown that it was frequently resorted to, and that the powers conferred by it are not sufficient, I could understand the enactment of a provision like the present one. I do not know whether any application has been made by the Executive with regard to the extension of the powers they now possess. I do not think they have. They do not want these powers extended and amplified. Why, then, handicap this measure, already sufficiently unpopular, with a coercive provision which will lie as a dead-letter? This provision, I am almost certain, will never be put into requisition. There is a class of bills to which I desire to call the attention of the Hon'ble Member in charge of the Bill. I think the Hon'ble Member is acquainted with certain bills which are known as miscellaneous in the Municipality for works supposed to be done on requisition made by the municipal authorities. Most scandalous transactions have taken place in connection with these bills. Mr. Lee felt the scandal to be so great that he made it a rule that none of these bills should be paid by the authorities unless and until the bills had been certified by the parties concerned to be correct. The other day a work was supposed to be done in a particular place and a miscellaneous bill was drawn out, and I believe the Warrant Department was required to realise the dues; but, strange to say,

the discovery was subsequently made that no work had been done in respect of those particular premises! Is it right and proper that a further coercive provision for the recovery of municipal dues should be enacted, when the validity of those dues might be questioned? I have no objection to the water-supply being cut off for non-payment of the water-rate, but do not cut off the water-supply as a means of enforcing the payment of other dues. Water is the life of the people; do not cut it off for the non-payment of bills which may be a huge fiction, or which may be so manipulated as to serve the purposes of unscrupulous underlings. I speak with some amount of feeling because I know how unscrupulous municipal underlings can be, and I shall be exceedingly sorry if this section is enacted. What constitutes the due presentation of a bill? The bill is supposed to be presented by a sircar on Rs. 8 a month, who may or may not present it as it suits him, but he will certify all the same that he has presented it. In the investigation which the Vice-Chairman made into the working of the Warrant Department, in case after case it was discovered that the certificate of the sircar was absolutely false, and the bills were never presented. And is it right, is it necessary, that, for the non-payment of any sum due, the water-connection should be cut off? I say 'no.' I hope, having regard to these circumstances, that clause (b) will not be passed, and I must earnestly entreat the Council not to go beyond the four corners of the present Act. Cut off the water-rate on failure to pay the water-rate; no further powers are needed or have been asked for. I say that, if you grant further powers, the effect will be disastrous, and therefore I ask the Council to keep the law as it is, because I am certain that they are amply sufficient."

The Hon'ble Mr. BAKER said:—"I am strongly opposed to this amendment, and I trust the Council will leave the Bill as it is. The Hon'ble Mover of the amendment began by saying that under the present law the water-supply can only be cut off for non-payment of the water-rate. What is the water-rate? It has no separate existence whatever. It is a mere percentage of the consolidated rate; and the provision to which the Hon'ble Member referred in the present Act is a mere error in drafting."

"Then the Hon'ble Member said that that power is very seldom resorted to under the present law. That is quite true, and that is a somewhat strong point in my case in favour of retaining this section in the Bill. It seldom happens that the water-connection is cut off, but it frequently happens that the Executive have to threaten to cut it off, and these threats are found almost invariably to be at once effective. The Chairman of the Corporation attaches the greatest possible importance to this power, and he says that without it he would scarcely be prepared to take the responsibility of collecting the municipal dues. Wealthy people, he says, habitually refuse to pay municipal dues, although perfectly able to do so; but you have only to issue a notice that, if the sum due is not paid within 24 hours, the water-connection will be cut off; and then the money is paid at once."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Does the Chairman refer to the provisions of this Bill or to the present Municipal Act when he says he will not be able to collect the municipal dues?"

The Hon'ble Mr. BAKER said:—"Of course, under the present Act the Chairman has only the power to cut off water-connection on non-payment of the consolidated rate."

"The Hon'ble Member has told us of grave scandals that occur in connection with the recovery of what are known as miscellaneous bills for works done under requisition by the Corporation, and he mentions one case in which no work was done and yet a bill was made out and payment was enforced. But how will such abuses be affected by this provision of the Bill? Suppose a bill is made out for work which was never done, and that the bill was certified by a responsible officer, and this very power to enforce payment by cutting off the water-connection is exercised, what will happen? How will the amount be recovered? Why, by only threatening to cut off the water-connection. And is it

not a greater scandal that a distress warrant should be issued on a fictitious bill than merely a threat to cut off the water-supply?

"The Hon'ble Member says that a threat of this kind will jeopardise the health of the people. Even if you go to the length of cutting off the connection, is there not a hydrant in the streets at every hundred and fifty yards? Can the residents of that house not get their supply of water from the nearest standpost? It will put them to a little inconvenience,—and it is intended that it should do so,—but their health cannot be affected. It is the inconvenience and the small expense the tenant will have to incur in having to fetch water from the street that will induce him to pay the bill at once. This method of collecting municipal dues is exceedingly effective, and it will be most unwise to refuse it as a means of recovering all dues of the Corporation. It is a simple, easy and effective way to recover what is due, and it is better to recover it in this way than by the tedious and sometimes harsh process of distraint."

The Hon'ble MR. OLDHAM said:—"I have only to add to what the Hon'ble Member in charge of the Bill has said that this time last year, just before the *Puja* holidays, an application was made by the Executive to resort to this means of recovering municipal rates and taxes on a most extensive scale by a gentleman whose name I refrain from mentioning only because I fear to expose him to further unpopularity as an officer of the Corporation, and this gentleman said that, if this mode of recovery were adopted, there would be no necessity to carry out the threat, for in most cases the amount due is at once paid."

The Hon'ble MR. BUCKLEY said:—"The Hon'ble Babu Surendranath Banerjee made it a great point that water is a sanitary necessity. In one respect it is so. There are a good many houses in Calcutta where privies and closets are supplied with unfiltered water, and if the water-connection were cut off it might be a serious detriment to the inhabitants of that house and of even the neighbouring locality; but we have made special provision in the Bill that the water which is supplied for these purposes cannot be cut off. We have given a separate stop-cock for these purposes, and to that extent no harm will arise by cutting off the water connection to the house. If a man owes you money, and you have a simple means of making him pay it, why should not you exercise that power?"

The Hon'ble MR. APCAR said:—"The Hon'ble Member in charge of the Bill is not aware of the great amount of oppression there is in connection with the system of making out these miscellaneous bills. I doubt whether he knows in what a large percentage the charges in relation to the work done are excessive. I do not think it right to force a person to admit the correctness of a claim which he is disputing by putting penal clauses into operation. We know that it is entirely in the hands of certain men to insist, and very possibly in their own pecuniary interest, that certain claims shall be regarded as good and fair claims, and the Chairman will be pressed to take action in this way when persons against whom claims are made, it may be, are contesting the validity of the claim. I do not think it right that this should be permitted."

"Furthermore, I submit, that it is an insanitary measure to cut off the water-connection from any house. Under section 252 (*now* 253), it is held to be a sanitary measure to compel persons to connect their premises with the water-supply, and here there is a provision deliberately made to cut off that which is considered a sanitary necessity. I think it is far better that action should be taken under the distraint and warrant process. It may imperil the health of a household if the water-connection is cut off in the way which is contemplated under this section. It may be that the threat will be put into execution. I object to this provision, firstly because it may be employed as a means to compel a person to admit a claim which he is disputing, and also because cutting off the water-connection may affect the health of the household and even part of the neighbourhood. I would omit this section altogether, but if it is retained its application should be restricted to claims of a definite character, in respect of which there is no dispute; but, if you put it into force in

the case of these miscellaneous bills, it will open a door to most iniquitous proceedings in some cases."

The Hon'ble THE PRESIDENT said:—"Suppose the recipient of a miscellaneous bill disputes its correctness, would the Hon'ble Member have the Corporation wait fifteen days before the Chairman can act?"

The Hon'ble MR. APCAR said:—"In legislating in the question we should not forget that persons against whom this drastic measure is proposed may be poor and ignorant, and unaware of the opportunity of the fifteen days that the Bill proposes to secure to them."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If a bill is presented to a person, and he disputes it, he will make a representation against its correctness. I know of one case where a person knew nothing about the bill or the work until the warrant peon actually went and distrained the man's property."

The Hon'ble MR. APCAR said:—"We are proceeding without proper enquiry; we are only making assertions here. It would have been wiser, and I should have much preferred, if there had been an enquiry, and facts properly ascertained upon which we should be able to proceed. Sircars are supposed to have duly presented these bills, but it often happens that the bills have not been presented. These proceedings are attended with a great deal of hardship."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I desire to enter my most emphatic protest against the provisions of section 265C (*now* 283), clause (b). In spite of the uncompromising attitude of the Hon'ble Member in charge of the Bill, I cannot persuade myself to believe that he himself fully realises the unjust and mischievous consequences which may result from its enforcement. These provisions are of a too sweeping and needlessly stringent character. To enable you to realize accurately the scope of the section, I will take some concrete illustrations. Suppose that the owner of a *bustee* is also the owner of several houses; he pays the *bustee* rates, having collected them from the *bustee* tenants, but he omits to pay the tax due in respect of some other house belonging to him. Would it be open to the Chairman to cut off the water-connection from the *bustee*, and deprive the *bustee* people of the use of the water though they are perfectly innocent?"

The Hon'ble MR. BAKER said:—"The water-connection would be cut off from the premises on account of which the money is due."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA continued:—"The section does not say so. Its scope is wholly unrestricted. The owner may not reside in Calcutta, and thus may be himself beyond the mischief of the section. It would therefore, be quite open to the Chairman to enforce the provisions of this section against any premises belonging to the owner. Take another illustration. The occupier of a house happens to be the owner of other houses; he pays in full the rates in respect of the house he occupies, but not in respect of the other houses. Would it be open to the Chairman to cut off the water connection of the house in respect of which the rates have been paid? Then turn to section 639 (*now* 616), which runs thus:—

"(1) If, when the Chairman demands payment of any expenses under section 627 (*now* 602), his right to demand the same or the amount of the demand is disputed, the Chairman shall refer the case for the determination of the Chief Judge of the Court of Small Cause of Calcutta, or, if the amount involved exceeds two thousand rupees, to the High Court.

"(2) The Chairman shall, pending the decision on any such reference, defer further proceedings for the recovery of the sum claimed by him, and shall, after the decision, proceed to recover only such amount, if any, as is thereby declared to be due."

"But the Chairman may, meanwhile, cut off the water-connection at a time when the whole matter is pending before a Judge. I do not think that even the Hon'ble Member in charge of the Bill, with all his zeal, will be prepared to

accept this as a legitimate consequence, and I submit very respectfully that this matter requires very careful consideration."

The Hon'ble Mr. BAKER said:—"I will agree to an exception being made in cases in which a reference has been made to the Small Cause Court or to the High Court under section 639 (now 616). That is a point which was not brought to my notice."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"Along with my hon'ble friend who has spoken I certainly regret the uncompromising attitude assumed by the Hon'ble Member in charge of the Bill. This is not a question of principle, but of expediency. Our contention is that the provision is likely to be oppressive. We are bound to consider the executive point of view, but even from that point of view I do not think a case has been made out for such legislation. My hon'ble friend in charge of the Bill said that Mr. Bright expressed the opinion that he would not be able to collect the rates and taxes unless he was armed with such a power. The question is whether Mr. Bright made that observation in connection with this provision of the Bill, or in connection with the following amendment, of which I gave notice, namely, to move that the following be substituted for clause (b) of section 265C (now 283):—

"(b) if in the case of a *buster* the owner, or (in any other case) the occupier, of the premises fails, for fifteen days after due service of a notice, to pay any sum due to the Corporation on account of the consolidated rate from him or in respect of such premises."

"I want to keep the present law intact, and to arm the Chairman with the power of cutting off the water for non-payment of any portion of the water-rate. I am prepared to preserve to the Chairman the power which he possesses at the present moment, but I am against any enlargement of his powers in this respect, because no case has been made out for such enlargement, and the exercise of the powers proposed to be conferred by this section of the Bill may be attended with serious hardship."

"I was sorry to find the Hon'ble Member in charge of the Bill making light of these miscellaneous bills, for he seemed to be surprised that any abuse should occur in connection with them. Miscellaneous bills are made out in many cases which are suspicious and are challenged, and to arm the Chairman with the power of enforcing the payment of these bills by the threat of cutting off the water-supply might give rise to serious oppression and hardship. What are these miscellaneous bills? They are bills for work done by the Corporation at the expense of owners who fail to comply with requisitions made upon them by the Corporation. The Corporation has not got a staff to do this work. It is done by contractors, and these contractors are in alliance with the office, and put up men in the office to make out bills in respect of some of which, at any rate, no work is done. Therefore, it comes to this, that it is these contractors on the lowest rung of the ladder who set the machinery in motion, and unscrupulous underlings will profit by the execution of this summary procedure with which the law proposes to arm the executive. Is it right and proper that such powers should be given?"

The Hon'ble THE PRESIDENT said:—"I thought the Hon'ble Member said that the act of cutting off the water was a thing which was absolutely unknown."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The Executive wanted on one occasion to cut off the water-supply in connection with the recovery of the rates, but the General Committee would not allow it."

The Hon'ble Mr. BAKER said:—"Even in the cases to which the Hon'ble Babu Surendranath Banerjee referred, it was only a threat that was required."

The motions that clause (b) of sub section (1) of section 265C (now 283) be omitted were then put together and lost.

The Hon'ble BABU SURENDRANATH BANERJEE's motion for the substitution of a new clause (b) being put, the Council divided as follows :—

Ayes 6.

The Hon'ble Raja Ranajit Sinha Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apcar.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi
Delawar Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "in the case of a *bustee*, by the owner of the premises, and in any other case," in lines 3, 4 and 5 of sub-section (2) of section 265C (*now* 283) be omitted.

He said :—"This sub-section makes it obligatory that the expense of cutting off the water-connection or of turning off the water should be paid by the owner of the *bustee*. The owner may absolutely have no sort of knowledge of the matter. It is the occupier who breaks the law, but it is the owner who has to pay the expense of cutting off or turning off the water. The owner may be absolutely ignorant and in no way responsible for what has been done, and yet you make him pay. Take clause (e). Suppose the occupier of a hut in a *bustee* and a municipal underling have a fight, is the owner to be made to pay? I think it hard that the owner who knows nothing of these proceedings should be responsible for the expenses incidental to cutting off the water-supply in consequence not of any *laches* on his own part but of one of his tenants. It is the case of visiting the sins of one person on the shoulders of somebody else. I am certain that this provision will not commend itself to the Council."

The Hon'ble MR. BAKER said :—"That person has to pay the expense of cutting off the water who is responsible for the payment of the rates. In the case of a *bustee*, the *bustee* owner is personally liable to pay the consolidated rate, and that is the justification for this clause. I admit that in the special case to which the Hon'ble Member referred it may seem to be a little hard, but when you look into it a little further I do not think it is so. As far as I know, there are no house-connections in *bustees*. There are only *bustee*-connections."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"Bustees of the extent of 10 cottahs all have water-connections."

The Hon'ble MR. BAKER said :—"Yes, *bustee*-connections, but not house-connections."

The Hon'ble MR. BUCKLEY said :—"The *bustee*-connection is provided by the Municipality and cannot be cut off."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said :—"My contention is that the people might waste water, and then the water-supply would be cut off. The standpoint in the *bustee* is not a public one. It is semi-private or semi-public, and is used by the inhabitants of the *bustee*."

The Hon'ble MR. BUCKLEY said :—"It is not a connection made at the expense of the owner; it is made by the Municipality and cannot be cut off. It is a part of the water-supply of the Municipality."

The Hon'ble MR. BAKER said :— "It is only a house-connection that can be cut off. These *bustee*-connections are not house-connections. I have never heard of any case in which a *bustee*-connection has been cut off."

The Hon'ble BABU SURENDRANATH BANERJEE said :— "I cannot say on the spur of the moment. I believe that, in all cases in which a house-connection is cut off, it is cut off at the expense of the owner."

The Hon'ble MR. OLDHAM said :— "*Bustee*-hydrants stand in the open air in an open space, inside the *bustee*, no doubt, but in a lane or *gully*. The hydrant is not in any house or enclosure or compound, and, so far as I understand, the water-supply from that standpost cannot be cut off."

The Hon'ble MR. APCAR said :— "So far as my information goes, the connection is made at the expense of the owner of the *bustee*, and it can be cut off. Here, again, I desire to point to the disadvantage of legislating without facts having been properly ascertained."

The motion was then put and lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 265C (now 283), sub-section (1), clause (b), last line, the word "or" be omitted.

He said :— "This seems to be a very small concession, but I am sure it will meet with opposition from the Hon'ble Member in charge of the Bill, because he has taken up an attitude of uncompromising hostility to whatever has the remotest tendency to soften the rigour of the law. Take the case I was putting before the Council in connection with the last amendment which has been discussed. The owner of a *bustee* owns not only that *bustee*, but also several houses. He collects rates from his *bustee* tenants and pays them in to the Municipality, but he makes default in respect of the rates due upon some of the other houses belonging to him. Is it open to the Chairman to cut off the water-connection of the *bustee*? If it is, I say it is most inequitable. What possible justification is there for making the *bustee* people suffer when they have paid their dues? You allege that by the machinery of this section you put a moral pressure on the owner, but the people who will suffer will be the *bustee* people and not the owner. The operation of the section ought clearly to be restricted to the premises in respect of which the rates are due."

The Hon'ble MR. BAKER said :— "I oppose this amendment, and it is hardly necessary for me to say much regarding it after what has been already said. This constant reference to *bustees* is really dragging a red herring across the track. Take the ordinary case—the case of a man who owns several houses, of which he lives in one, and lets out the others. If he pays the rates due on account of the house he lives in, and fails to pay the rates in respect of other houses which he owns and lets, you would not be able to touch him if this amendment is passed. I maintain strongly that you ought to be able to cut off the water from the house in which he lives if the rates on account of any other bills against him are outstanding."

The Hon'ble BABU SURENDRANATH BANERJEE said :— "I must again deplore the uncompromising attitude which the Hon'ble Member has taken with respect to these amendments. It is not a question of touching the owner at all. You have many means of recovering your rates. You can distrain his property; you can sue the person liable to pay in the Small Cause Court; why should you cut off the water-supply from a *bustee* which he owns? The Hon'ble Member assumes a position which is absolutely untenable."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said :— "I am bound to meet the hypothetical case which the Hon'ble Member in charge of the Bill has put. The section authorizes the Chairman to cut off the water-supply if the occupier does not pay the rates. If the owner pays the rates in respect of the house he occupies, and does not pay them on account of some other house which he owns, then you can realize the rates from the occupier of this latter

house, and the occupier in his turn will have his remedy against the owner. It seems to me, therefore, that if you restrict the operation of the section to the house in respect of which the rates have not been paid, there will be ample provision for every possible contingency."

The motion being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Bahadur Ranajit Sinha,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi
Delawar Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the motion, standing in his name, that at the end of section 265C, sub-section (1), clause (g) [*now* section 283, sub-section (1), clause (h)], the words "and the owner and occupier of the premises fail to comply with a notice issued under section 254E (*now* 269), sub-section (2)," be added.

SECTION 284.

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, by leave of the Council, withdrew the motion, standing in his name, that the words "General Committee" be substituted for "Chairman" in section 265D (*now* 284).

NEW SECTION.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following section be inserted after section 265E (*now* 285):—

"265F. The Chairman shall, in the performance and exercise of the duties and powers imposed and conferred on him by this Chapter, be subject to the control of the General Committee."

The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR, said:—"As a matter of convenience, the General Committee and not the Chairman should have this power."

The Hon'ble MR. BAKER said:—"In the Select Committee Babu Narendra Nath Sen desired to go infinitely further, not merely to give the Chairman power to direct that wells should be filled up, but to make it compulsory that every well in Calcutta should be filled up."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I want to proceed on the analogy of the Bill. A general power of revision is given to the General Committee by section 314A (*now* 327) in respect of the filling up of tanks, wells, &c. I find that there is a similar section in regard to the lighting of streets. The water-supply is a matter of very great importance, and it is a matter which affects the public, and I ask the Council to endorse the decision of the Select Committee in regard to drains and privies and lighting, and apply it to the water-supply. What has been accepted with regard to drains and privies and the lighting of streets I should like to see adopted with respect to the water-supply. The water-supply in one sense is far more important than drains and privies, and certainly far more important than the lighting of

streets. It is expedient that a sort of general supervision should be invested in the General Committee in respect of matters relating to the water-supply."

The Hon'ble MR. BUCKLEY said:—"During the whole of the sittings of the Select Committee, day after day I raised my feeble voice against the desire of the Hon'ble Mover of the amendment to centralise. I do not see that section 314A (now 327) gives the General Committee control over the Chairman. It says that an appeal shall lie, which is not the same thing as the Hon'ble Member proposes to introduce here."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am prepared to accept an appeal."

The Hon'ble MR. BAKER said:—"I could not possibly accept an appeal."

The Hon'ble MR. BUCKLEY said:—"I would ask, what are the duties of the Chairman in respect of the water-supply? It almost seems to me that the Hon'ble Member's motion is directed with the view of clogging the wheels of the Municipality; for it certainly will do so. The powers of the Chairman with regard to water-supply are 31 in number, and a great many of these are entirely of a subordinate character, which he will certainly delegate to others. He may require an owner to fix a stop-cock, which would be done in England by an Inspector; he may allow alteration in the size of a ferrule; he may make certain orders about repairs to taps and fittings. These are purely technical matters. He may require meters to be repaired when out of order. These are most simple duties, which are better left in the hands of the Chairman instead of providing that the order of the Chairman shall be subject to the control of the General Committee, which seems to me to be absolutely puerile. The Hon'ble Member has told us in how many instances fictitious bills are prepared, and I believe that that fact is largely due to the endless system of centralisation which he insists upon. I believe that, if responsibility is vested lower down the scale, these instances of false bills would be unknown. I have never known such cases where you have a responsible officer who can really be readily approached by the people."

The Hon'ble MR. OLDHAM said:—"I do not remember any such proposal as this being put forward before the Select Committee. I remember the other proposal to give an appeal to the General Committee with regard to the drainage provisions, but there is no analogy between those provisions and the provisions relating to the water-supply. This chapter of the Bill applies to matters relating to water-supply only. The chapter relating to drainage confers large powers for making alterations in buildings and of entry upon premises. In cases of that sort there may be of necessity for an appeal to the General Committee. The only section in the water-supply chapter in which the General Committee is vested with any power is that for giving of water to outside municipalities. Otherwise certain obligations are imposed on the Corporation and certain duties are imposed upon the Chairman, and he is given a discretion in particular cases which are carefully prescribed, and if he deviates from the directions about them he will be amenable to the law of the land."

The Hon'ble MR. BAKER said:—"I will only add one word to what has been already said with regard to the special provision which has been lately introduced in the chapter relating to lighting. That provision was not in the original draft of the Bill. It was put in mainly because it was represented that the Ward Commissioners liked to be able to help or oblige their constituents in respect of the location of street-lamps, and the General Committee has been given a general power of control in that respect, so that they may be able to meet the wishes of their constituents to a great extent."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I think the Hon'ble Mr. Buckley labours under a delusion. He is under the impression that both Babu Narendra Nath Sen and most of the Hindu Commissioners are in favour of centralisation. Whether that charge is well-founded or not I will not

now discuss, but, so far as this matter is concerned, it is not centralisation but decentralisation that we desire. This power is now centralised in the Chairman: we want to take it away and associate others in its exercise.

"The Hon'ble Member in the course of his observations characterised some of my proposals as puerile. They may or may not be puerile, but, as far as one particular matter is concerned, namely, the delegation of powers by the Chairman, it is a matter of considerable importance. It is a matter of considerable importance that there should be some control in regard to the Chairman's power of delegation. When the Chairman divests himself of responsibility and invests subordinate officers with certain powers, might not there be an abuse of those powers? Is it possible for the Chairman to exercise effective supervision so as to prevent abuses occurring? I do not think so. I think it would be impossible for him to exercise effective supervision. It stands to reason that an appeal or right of general control should be invested in the General Committee. My conclusions follow as a matter of course from the premises laid down. I quite admit the correctness of the observation of the Hon'ble Member in charge of the Bill, that in the matter of lighting the Ward Commissioners are concerned, and it is on that ground that that concession was made. I submit that the same observations apply to the matter of the water-supply. Ward Commissioners are constantly consulted with regard to the water-supply in streets, both filtered and unfiltered; and, as the Hon'ble Member has accepted our recommendation with regard to lighting, surely he ought to accept a similar recommendation with regard to the water-supply."

The motion being put, with the substitution of the words "an appeal to" for the words "the control of," the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Ranajit Sinha Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Khan Bahadur Maulvi Delawar
Hosain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Council was then adjourned to Friday, the 22nd September, 1899.

CALCUTTA,
The 16th January, 1900. }

F. G. WIGLEY,
Asst. Secy. to the Govt. of Bengal,
Legislative Department.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Friday, the 22nd
September, 1899.

Present:

- The Hon'ble SIR JOHN WOODBURN, K.C.S.I., Lieutenant-Governor of Bengal,
presiding.
- The Hon'ble MR. W. B. OLDHAM, C.I.E.
- The Hon'ble MR. R. B. BUCKLEY.
- The Hon'ble MR. C. W. BOLTON, C.S.I.
- The Hon'ble MR. E. N. BAKER.
- The Hon'ble RAI DURGA GATI BANERJEA, BAHADUR, C.I.E.
- The Hon'ble MR. C. E. BUCKLAND, C.I.E.
- The Hon'ble MR. F. F. HANDLEY.
- The Hon'ble MR. F. A. SLACK.
- The Hon'ble KHAN BAHADUR MAULVI DELAWAR HOSAIN AHMED.
- The Hon'ble BABU JATRA MOHAN SEN.
- The Hon'ble MR. T. W. SPINK.
- The Hon'ble RAJA RANAJIT SINHA BAHADUR, OF NASHIPUR.
- The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH, C.I.E.
- The Hon'ble MR. D. F. MACKENZIE.
- The Hon'ble MR. J. G. APCAR.
- The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.
- The Hon'ble BABU ROIKANTA NATH SEN.
- The Hon'ble BABU SURENDRANATH BANERJEE.

THE CALCUTTA MUNICIPAL BILL.

SECTIONS 299, 300, 307, 320, 328, 339, 340, 341, 343, 349, 368, 369 AND 383.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motions standing in his name:—

(1) that in section 287 (*now 299*)*, before clause (a), the words "within a reasonable time, to be specified in such notice," be inserted;

(2) that in section 288 (*now 300*), line 6, after the word "make" be inserted "within a reasonable time to be specified in such notice;"

(3) that in section 292E (*now 307*), at the end of sub-section (2), the words "within a reasonable time, to be specified in such notice, and upon failure of the owner to do so, authorise the Chairman to carry out the necessary works," be inserted;

(4) that in section 292E (*now 307*), at the end of sub-section (3), be inserted "and such sums shall be recoverable in the same manner as arrears of the consolidated rate;"

(5) that in section 296 (*now 320*), sub-section (2), last line, for "paid by" be substituted "recoverable from," and that after "premises" be inserted "in the same manner as an arrear of the consolidated rate;"

(6) that in section 314B (*now 328*), sub-section (3), for "paid by" be substituted "recoverable from," and that at the end be added "in the same manner as an arrear of consolidated rate;"

(7) that to section 329 (*now 339*), sub-section (2), the following be added:—

"and, if such notice is not complied with within three days from the date of service thereof, the Chairman may cause such hedges and trees to be cut in the manner required, and the expenses thereby incurred shall be recoverable from the owner of the house or land in the same manner as an arrear of consolidated rate;"

(8) that at the end of sub-section (3) of section 326B [*now* sub-section (5) of section 340] be added "within a reasonable time, not less than fifteen days from the date of service, to be specified in such notice;"

(9) that at the end of sub-section (1) of section 329C (*now 341*) be added "within a reasonable time, not less than thirty days from the date of service, to be specified in such notice;"

(10) that at the end of section 329E (*now 343*) be added "within a reasonable time, to be specified in such notice;"

(11) that at the end of sub-section (3) of section 330D (*now 349*) be added "and, upon failure on his part to comply with such notice within a reasonable time, the Chairman may replace it and levy from the owner a sum of five rupees;"

(12) that at the end of sub-section (2) of section 366 (*now 368*) the words "within a reasonable time, not less than seven days, to be specified in such notice" be added;

(13) that at the end of section 371 (*now 380*) be added "within a reasonable time, not less than thirty days, to be specified in such notice;"

(14) that in section 391D (*now 383*), clause (ii), after "him" be inserted "within a reasonable time, to be specified in the notice."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"These amendments will have to be withdrawn, as the object I have in view is provided for in section 622 (*now 597*)."

SECTION 152.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA drew attention to the amendment, of which he had given notice, that in section 148B (*now 152*), sub-section (1), for the words "the period for which they were so made" be substituted "two years from the commencement of this Act."

He said:—"With reference to this amendment, I have placed myself in communication with the Hon'ble Member in charge of the Bill, and, with the leave of the Council, I propose to move in substitution for it the fresh amendment† of which notice has been given."

At the suggestion of the Hon'ble THE PRESIDENT the amendment just referred to was postponed in order to permit of copies being printed and circulated to the Members of the Council for their information.

SECTION 230.

The Hon'ble THE PRESIDENT then said:—"I understand that the amendments which the Hon'ble Dr. Asutosh Mukhopadhyaya proposes to substitute for those he originally moved to section 220T (*now 230*) are also not in possession of Members of the Council, and I, therefore, think that those amendments might also be postponed until to-morrow."

The consideration of the amendments was accordingly postponed.

* The sections of the Bill having, under the direction of the Council, been re-numbered, the present number of each section is inserted in brackets, wherever the new numbering differs from the old.

† This amendment was brought forward and agreed to at the meeting held on the 23rd September, 1899.

SECTION 253.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—" Before Your Honour takes up the motions on the agenda paper, I would take leave to ask permission to give notice of an amendment to section 252 *now* 253) which has been drafted for me by the Secretary, but which I do not think should be placed before the Council until it has been printed and circulated."

The Hon'ble THE PRESIDENT said :—" I quite agree that these three motions should stand over until to-morrow."

SECTION 300.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 288 (*now* 300), at the beginning of clause (ii), the words "if no suitable cesspool already exists" be inserted.

He said :—" This section is taken from the Bombay Act, section 232, and the words I propose to put in find a place there. In the Bombay Act we find in section 242 the words 'and the Commissioner may in like manner require any such drain, and, if no suitable cesspool exists, any such cesspool to be made of such materials, size and description, and to be made at such level, and with allowance for such fall as may appear to him to be necessary.' These words appear to me to be necessary, because, if a cesspool already exists, it is not necessary that each individual householder should be obliged to have a cesspool in front of his house."

The Hon'ble MR. BAKER said :—" This amendment does not seem to be necessary. In the first place, it seems to me that the whole section is governed by the opening words of it, *viz.*, 'when in cases not provided for in section 287 (*now* 299) any premises are, in the opinion of the Chairman, without sufficient means of effectual drainage, he may,' &c. I think that covers all that the Hon'ble Member wishes to add. And I think also that we must take it for granted that the Chairman will exercise his powers with common sense. If there should be a suitable cesspool already in existence, surely he would never require the owner to provide another."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—" After this explanation I do not wish to press the amendment."

The amendment was then, by leave of the Council, withdrawn.

SECTION 307.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 292E (*now* 307), sub-section (3), line 5, after "funds" be inserted "the owner of the land shall be bound to pay the cost of such construction and."

He said :—" I want to put in these words in order to make it clear that the cost of the construction is to be borne by the owner of the land, and the cost of repair alone by the owner of the hut. I think that is what is intended to be the law."

The Hon'ble MR. BAKER said :—" This is already provided for in section 622 (1a) [*now* section 597, sub-section (2)]; that section gives a general power to recover the cost of carrying out works from the person on whom the notice has been served. By sub-section (2) of section 292E (*now* 307), the General Committee may serve written notices on the owner of the land requiring him to construct the drain."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—" Yes, that is so. I accept the explanation and withdraw the amendment."

The amendment was then, by leave of the Council, withdrawn.

SECTION 319.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that at the end of section 295 (*now* 319) the following be added :—

"Provided that the amount recoverable as expenses of such inspection and examination shall not in any case exceed ten rupees."

He said :—" A similar provision will be found in section 265B (*now* 282), proviso."

The Hon'ble MR. BAKER said:—"I accept the amendment."

The motion was put and agreed to.

SECTION 321.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "not being dwelling-houses" be inserted after the word "premises" in line 5 of section 296A (*now* 321).

He said:—"Sir, ventilating shafts are dangerous to dwelling-houses, and they are being removed throughout the town, I believe. I think, if my hon'ble friend would place himself in communication with the Health Department, he would find that that Department are engaged in removing these ventilating shafts from dwelling-houses. They are positively dangerous in that position. I placed myself in communication with the Assistant Health Officer, and he was of opinion that this suggestion should be made. These shafts are being removed, and it would be as well for us to lay it down as part of the law that they shall not be fixed to dwelling-houses."

The Hon'ble MR. BAKER said:—"I am afraid this amendment is impossible. The section follows the existing law, and, as far as I know, it must usually happen that the buildings to which ventilating shafts will be attached must be dwelling-houses."

The Hon'ble MR. OLDHAM said:—"When we sat in Select Committee we had before us a model dwelling-house which was furnished with these ventilating shafts. I had heard something to the effect that they can be dangerous, but no objection was taken at that time."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"That was a Bombay model, and I don't think, Sir, we ought to pin our faith upon models of dwelling-houses in a city which has for the past two or three years been desolated by the plague. Anyhow, that has been the view put before me, and I think I ought to draw the attention of the Council to it. The Assistant Health Officer assured me that steps are being taken to remove these ventilating shafts. Is the Hon'ble Member in charge of the Bill prepared to challenge this statement?"

The Hon'ble MR. BAKER said:—"I cannot challenge it, as this is the first time I have heard of it."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If my hon'ble friend will place himself in communication with the Health Officer, he will find out all about it and that it is so."

The Hon'ble MR. BAKER said:—"My opinion is that this cannot be done all over the town. It may be possible to remove them in some instances, but not in all."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"You recognise the fact that it is not desirable to have these ventilating shafts fixed to houses. I think it is decidedly dangerous to have them."

The Hon'ble THE PRESIDENT said:—"Can the Hon'ble Member tell us, when a ventilating shaft, which is required for sanitary purposes, is removed from a dwelling-house, to what building that shaft has subsequently to be fixed?"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"No, I cannot tell you that, Sir."

The Hon'ble MR. BUCKLEY said:—"I had intended to say a few words before my hon'ble friend replied. I apologise for speaking after he has replied, but I should like to point out that not only is it the case that these ventilating shafts must be fixed to dwelling-houses when there is no other building to which to fix them, but dwelling-houses have their own ventilating shafts in many cases, and it is necessary that they should have them. This section is intended to apply to public ventilating shafts, and it would, no doubt, be desirable to place them somewhere else, if it were possible to do so. But it is not possible to do so in all cases, and in the Bill there are stipulations that these shafts shall be carried well above the houses out of danger as far as possible. I am afraid the Hon'ble Member's suggestion is not practicable."

The motion was then put and lost.

SECTION 324.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that at the end of section 296D (now 324) be added:—

"The decision of the Court of Small Causes shall, subject to the provisions of Section 6 of the Presidency Small Cause Courts Act, 1882, or section 25 of the Provincial Small Cause Courts Act, 1887, as the case may be, be final."

He said:—"This amendment is based on precisely the same principle as my amendment to sub-section (3) of section 148N (now 163). I then explained to the Council the reasons why it is desirable to invest the High Court with power to interfere with the decision of a Small Cause Court Judge, where such decision is erroneous in law, and has by reason of such error caused hardship or injustice. That was accepted by the Council, and I place this proposal on precisely the same ground."

The Hon'ble MR. BAKER said:—"Can the Hon'ble Member say if it is at all likely that any question of law will arise under this section? That is the only doubt which has occurred to me."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Questions of law may arise on the construction of these sections."

The Hon'ble MR. BAKER said:—"I should hardly have thought that any question of law was likely to arise. The Hon'ble Member has convinced me that it is desirable for the High Court to have the power of revision in matters of law, and the only doubt I felt in this particular section was that no question of law was likely to arise. If any question of law arises, it is better to have these words; and, if none does arise, they will do no harm."

The motion was then put and agreed to.

SECTION 325.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "or water-course" be inserted after the word "tank" in line 4 of sub-section (1) of section 311A.

He said:—"I had Tolly's Nullah in my mind in proposing this amendment. It is not a tank, nor is it a place for the storage of water, and I think it is as well that steps should be taken to provide against the pollution of Tolly's Nullah. I therefore think it would be advisable to have these words inserted."

The Hon'ble MR. BAKER said:—"These words were in the original Bill, and they were struck out in Select Committee, because we thought that there was no such thing as a water-course in Calcutta. If Tolly's Nullah cannot be described by any other term, then I shall not object to this amendment."

The motion was put and agreed to.

SECTION 327.

The Hon'ble BABU JATRA MOHAN SEN, by leave of the Council, withdrew the motion standing in his name that in section 314A (*now* 527), sub-section (2), the words "subject to the control of the Corporation" be inserted after "shall."

He said:—"Sir, having regard to the sense of the Council as to the undesirability of interfering with the decision of the General Committee by the Corporation, I withdraw this amendment."

SECTION 329.

The Hon'ble BABU SURENDRNATH BANERJEE moved that sub-section (3) of section 315 [*now* sub-section (2) of section 329] be omitted.

He said:—"Sir, we have no such provision as this in the present law, that is as to the license being for a renewable period of one year, although we have provision for the cancellation of licenses in case of misconduct. I desire to call attention to sub-section (2) of section 321 (*now* 335), which says: 'if any licensed plumber contravenes sub-section (1), his license will be cancelled whether he be prosecuted or not.' So that, if a plumber does anything he ought not to do, there is ample power provided in the Bill for the cancellation of his license. I have an objection to the renewal of licenses every year. Every time a plumber goes to the Municipal Office to pay a license, he has to fee a number of people, and I am anxious that that process should not continue indefinitely. The provision does not exist in the present law, and, as there is ample power in that law, it does not seem necessary to have a provision like this."

The Hon'ble MR. BAKER said:—"I think it is impossible to have a perpetual license; that would be neither desirable nor practicable. I notice also that in section 611 (*now* 586) it is definitely contemplated that licenses shall be for a fixed period. I think one year is a reasonable time, and I ask that this clause be allowed to stand."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"My hon'ble friend's argument is this. You have got something in section 611 (*now* 586), and as you have got something in that section, this section must remain. My reply is, change what is here and also what is in section 611 (*now* 586). I think that will meet that part of my friend's argument. We have got a provision in this section which is in conflict with section 611 (*now* 586). Change this section and adapt 611 (*now* 586) to what we have changed this section to. I think that process is easy and does not involve any difficulty whatever. My hon'ble friend says that it is impossible that these licenses should run for an indefinite period. I venture to say that this is an *obiter dictum* of his, as I do not see why it is impossible at all. If he holds that opinion, why not fix three years as the period? It is not desirable that these people should go to the Municipal Office and fee people all round. Every time any one has to go to the Magistrate for the renewal of an arms license, he fees everybody, beginning with the peon and going up to the peshkar. Such a state of things does not exist in the Corporation now, and I do not see why we should create it there. Therefore, Sir, I hope my hon'ble friend will accept the compromise which I now propose."

"The Hon'ble MR. BAKER said:—"I have no objection to three years. I do not think these licensed plumbers are in any respect like the people who take out arms licenses."

The Hon'ble MR. OLDHAM said:—"I would say that these licenses are more of the character of diplomas, and a diploma may be given for a permanent period. I believe that the objections to yearly renewals are very strong, and that three years may be accepted as a compromise."

The Hon'ble MR. HANDLEY said:—"What remedy has the applicant if the Chairman refuses his application under sub-section (4) [*now* (3)]?"

The Hon'ble MR. BAKER said:—"He has an appeal to the General Committee."

The Hon'ble MR. BOLTON said:—"I think three years may very well be accepted as a compromise."

The motion was put in the amended form and agreed to.

SECTION 331.

The Hon'ble BABU SURENDRANATH BANERJEE moved that clause (c) of section 317 (*now* 331) be omitted.

He said:—Clause (b) provides that a licensed plumber shall furnish the Engineer with plans of all drainage works carried out under clause (b). If you turn to clause (a), you will see that under it the plumber may, before the work is begun, prepare for the approval of the Engineer plans and estimates for the drainage of premises. So that he has to do this twice; first, before the work is undertaken, and, secondly, after the work has been finished. Is this double safeguard necessary? Is it not quite enough that the plumber should prepare the plans on the first occasion, and might we not trust to these plans and estimates being carried out? I suppose the unfortunate persons, whose drains are being connected, will have to pay for the plans and estimates in the first instance, and again in the second instance. I do not think we have got these elaborate provisions in the present law, and it seems to me it ought to be enough if plans and estimates are submitted before the work is undertaken, and then subsequent plans and estimates may be dispensed with. The position of a plumber with regard to the Corporation has some sort of analogy to the position of an Attorney in the High Court. He is regarded as a sort of *quasi*-officer of the Court. The Court has a hold on him, as the Corporation has a hold on the plumber. If a plumber misbehaves himself, his license is liable to be cancelled; and, if he does things not in accordance with the plans and estimates, he is liable to be punished. Therefore, he has the strongest possible motives for doing all these things in accordance with the plans and estimates. If they are not done in accordance with the plans and estimates, there is the owner whose interest it is that the work should be done properly. And, having regard to this double safeguard, it seems to me unnecessary to have this second series of plans and estimates. I think it is throwing a double burden on the tax-payers, and I am myself a tax-payer; I therefore propose that clause (b) should be omitted."

The Hon'ble MR. BAKER said:—"I think my hon'ble friend is under some misapprehension. There is no intention that two plans and estimates should be prepared. What is intended is that, when the work has been carried out, the original plan and estimate shall be deposited with the Engineer."

The Hon'ble MR. BUCKLEY said:—"I think my hon'ble friend Mr. Baker is mistaken. It is very desirable, indeed, that, when the work is completed, the Municipality should be in possession of plans showing how the drains are carried. A man may have prepared a plan showing the way he intended to carry the drains, but difficulties may subsequently have arisen, and he may, in consequence, have found it necessary to carry the drains in a different direction. That being so, it is most necessary that drains, as they are exactly constructed, should be recorded for the information of people who have control over them afterwards. As a matter of fact, it will not be such a difficult matter as the Hon'ble Babu Surendranath Banerjee seems to think. In most cases a man would make his plans in the first instance; he would then, if he had to alter the drains, make a few marks on them showing the alterations, and then have a tracing prepared of the revised map. I do not suppose the whole thing would cost more than one or two rupees."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I think in clause (a) the word 'may' should be replaced by the word 'shall.' I may be under a misapprehension, and if I am, my hon'ble friend will enlighten me on the

point. Is it optional with the plumber to make a plan in the first instance and obligatory upon him to furnish a plan when the building is finished?"

The Hon'ble Mr. BAKER said:—"When a plumber is employed in carrying out any work, he must prepare plans for the Engineer's approval before he can do it, and, if the work is carried out without change, he simply deposits those plans in the Engineer's office. If alterations are made, he marks the alterations on the plans and deposits them in the Engineer's office. There is nothing further than that."

The motion was then, by leave of the Council, withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following proviso be added to clause (c) of section 317 (now 331):—

"Provided that, before any such works are carried out, the plumber shall submit a plan of the work and an estimate of the cost thereof to the owner or occupier of the premises, as the case may be."

He said:—"I think, Sir, that it is only fair that before the works are carried out the plumber should make out plans and estimates and submit them to the Engineer. I think also that it is only right and proper that the person who has to pay shall be furnished with plans and estimates. I think my hon'ble friend ought not to object to a provision of this kind. I may tell you, Sir, that as a matter of fact at the present moment, when a plumber finds that the owner or occupier of the premises is rather a big person, he always brings the plans and shows them to him for his approval. The plumber doubtless thinks that if he does not do so, he may create difficulties later on. I think it ought to be made obligatory that these plans should be submitted to the rate-payers before they are carried out. The person who pays the money has the right to know what the work is for which he pays. I think that is a perfectly fair and reasonable proposal."

The Hon'ble Mr. BAKER said:—"I would point out to the Hon'ble Member that this clause comes into operation only in the event of the owner having made default in carrying out the work himself. In the first instance, it is quite open to him to carry out the work through his own plumber. If he fails or neglects to do so, then the Chairman comes in and appoints his plumber, and I do not see that the owner has anything further to say in the matter. I am afraid that, if this amendment is allowed, an obstructive owner will seize upon the opportunity afforded to him and delay the matter further. He will raise frivolous objections if he wants to delay the progress of the work. That is the sole ground of objection. I have no very strong objection to this proposal, but I do think that on the whole it is dangerous. I cannot see that the defaulting owner has any strong claim to have the plan submitted to him."

The Hon'ble Mr. APCAR said:—"I do not think that it will be in the power of any owner to delay. All this provides for is that he will have some information as to what is going to be done. There may be many reasons why the owner has not proceeded to put the drains in order. It may be that he is in default accidentally, and, if any work has to be done for which he is liable, I think information ought to be given to him as to what that work is to be. I am entirely in support of the amendment, and if my hon'ble friend, the Member in charge of the Bill, does not hold a strong opinion in regard to it, I hope that it will be allowed and passed into law."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"Frivolous objections the owner cannot raise. It is not as if his sanction were required. It is only for information. He has to pay for the work, and all that I say is that he should see a statement of the work for which he has to pay. I do not see that he has it in his power to raise frivolous objections or to delay the execution of the work."

The Hon'ble Mr. SPINK said:—"I understand there would be no difficulty in his finding out from the Municipal Officer any information he requires."

The Hon'ble Mr. MACKENZIE said:—"It occurs to me, Sir, that the plumber would not undertake the work without first submitting the plans. What owner or occupier would have the work done without seeing the plans?"

The Hon'ble Mr. BAKER said:—"What would happen is this. In the first instance, the Chairman serves the notice on the owner to carry out certain work, and, if the owner fails or neglects to do so, then the Chairman orders a plumber to do it. I think the section should be allowed to stand as it is."

The Hon'ble Mr. BOLTON said:—"If the provision which the Hon'ble Babu Surendranath Banerjee wishes to introduce is accepted, it will encourage owners to delay the carrying out of drainage improvements on the receipt of notice from the Chairman, because, by doing so, they will afterwards have an opportunity of checking the estimates for the work and of raising objections. The absence of the provisions will not prejudice them. The Chairman will not disregard any reasonable representation from them against unnecessary expenditure."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The owner ought to know what he is paying for, and he would not know that unless this statement is laid before him. My hon'ble friends over there seem to be of opinion that the rate-payers are a body who are anxious to evade all the orders they are required to carry out. There are many causes besides wilful negligence which may have caused the work to be overlooked. For instance, the owner may be living away from Calcutta. Take my own case. I have a house here, but I live away from the city. I might not receive the notice, and I might not know that the work was required to be done. I do not think we ought always to assume that default is made through a wish to evade the law or from sheer negligence. If my hon'ble friends opposite would not regard the rate-payers in the way they do, but would take a broader view, they would probably look at the matter in a more charitable light. It is simply a principle of justice which I think ought to be accepted."

The Hon'ble Mr. BOLTON said:—"If any representation is made to the Chairman that the failure to execute the work was due to the owner's absence from town, he will, no doubt, grant time to the owner to carry out the work himself."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The Chairman knows nothing of all this. He delegates his powers to somebody else, and he delegates his powers to somebody else, and so on. If the Chairman himself attended to all these things, I would for my part be quite willing to trust to him implicitly, and we could do without any municipal law at all. But, as I have said, his powers are delegated to subordinates, he relies upon a great many agents, and those agents neither my hon'ble friends nor myself would trust. The Chairman is, however, obliged to employ them in the discharge of his duties. I really cannot understand what objection there can be to a simple amendment of this kind. It could not possibly do harm; all that is required under it is that the plans should be submitted to the man before he is called upon to pay for the work."

The motion being put, the Council divided as follows:—

Ayes 8.

The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Raja Ranajit Sinha Bahadur,
of Nashipur.
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Boikanta Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apear.
The Hon'ble Dr. Asutosh Mukhopadhyaya.
The Hon'ble Khan Bahadur Maulvi
Delawar Hosain Ahmed.

Noes 10.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhtyar
Shah.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

SECTION 338.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 328 (*now* 338), sub-section (2), line 4, for "may" be substituted "shall."

He said:—"This is a very small matter, which does not admit of much discussion. It seems to me that the intention of the section is to make a reference to the General Committee compulsory; if so, 'shall' is the proper word."

The Hon'ble MR. BAKER said:—"I have no objection, Sir. I think 'may' means 'shall' in this case."

The motion was put and agreed to.

SECTION 339.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 329 (*now* 339), sub-section (3), for the words "cause any hedge or tree referred to in sub-section (2) to be trimmed, pruned or cut" be substituted "take action under sub-section (2)"

He said:—"This is a purely verbal amendment intended to make the section shorter."

The Hon'ble MR. BAKER said:—"I think we had better follow the wording of the section as it stands, which has been settled by the Secretary of the Council. I am not sure that the effect would be exactly the same."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"If my hon'ble friend has any serious objection, I will not press the amendment."

The motion was then, by leave of the Council, withdrawn.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that in section 329 (*now* 339), sub-section (3), line 8, the words "or occupier" be omitted.

He said:—"This is a matter of substance. Under the law, the trees are the property of the owner, and when the Chairman takes action under sub-section (3) of section 329 (*now* 339), I think in common fairness the owner ought to bear the expense, and not the occupier."

The Hon'ble MR. BAKER said:—"This follows the existing law. The intention is that the Chairman may take action in case of emergency, and shall have a double remedy against either the owner or the occupier. This matter was considered in Select Committee, and it was decided to leave in both words."

The Hon'ble MR. APCAR said:—"It may be, Sir, that the fault is that of the occupier; he may have been neglectful."

The Hon'ble MR. HANDLEY said:—"I would also point out that the Hon'ble Member, the mover, has not noticed that it is 'a hedge or a tree'; although trees are reserved to the landlord, I do not know that a hedge is"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I think a free discretion ought to be given to the municipal executive to deal with the owner or the occupier, as the justice of the case may require."

The motion was then put and lost.

SECTION 340.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 329B, sub-section (4) [*now* section 340, sub-section (6)], for the words "on payment of compensation" be substituted "and the owner or occupier shall be entitled to reasonable compensation out of the municipal funds on account of such removal."

He said :—“ If I may say so without impropriety, the language of the sub-section seems to me to be somewhat clumsy. The sub-section says :—

‘ At any time after permission has been given under sub-section (2) [now (4)] to put up a verandah, balcony, sunshade, weather-frame or the like, to project from a building, the General Committee may, by written notice, require the owner or occupier of the building to remove such projection on *payment* of compensation.’

“ Surely the word ‘ payment ’ is not appropriate. ‘ On receipt of compensation ’ might be tolerated. The person who removes the structure has not to pay the compensation. It has to be paid by the Corporation.”

The Hon'ble MR. BAKER said :—“ I see no objection to this, Sir, now that the first two lines of the amendment have been struck out.”

The motion was put and agreed to.

SECTION 343.

The Hon'ble RAJA RANAJIT SINHA BAHADUR OF NASHIPUR moved that the word “ Chairman ” be substituted for “ General Committee ” in section 329F (now 343).

He said :—“ To my mind, Sir, it appears that, in matters of such urgency as those dealt with in this section, the Chairman should be vested with the power to deal with matters mentioned in the section.”

The Hon'ble MR. BAKER said :—“ I agree to this amendment. There is no doubt that a matter like this would be a matter of urgency, and there is no necessity to delay action for reference to the General Committee. I notice also that in Bombay this matter rests with the Municipal Commissioner.”

The Hon'ble BABU SURENDRANATH BANERJEE said :—“ I have no objection to offer, and the General Committee is already so overburdened with work that perhaps it would be as well to substitute the ‘ Chairman ’ here. At the same time I do not like the principle. I should prefer that the work should be done as far as possible under the supervision of the General Committee, if not by the General Committee itself. But, as I have said, I have no serious objection to the proposal.”

The motion was then put and agreed to.

SECTION 344.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 329F (now 344), sub-section (1), the word “ not ” be transposed from line 3 to line 4 and placed between the words “ as ” and “ to.”

He said :—“ This is a small matter. I think the transposition of the word ‘ not ’ would make the section more emphatic. I want to have the two ‘ nots ’ as near each other as possible.”

The Hon'ble MR. BAKER said :—“ If that were accepted, Sir, it would be to make a further change. If the word ‘ not ’ is transposed, it will be necessary to change the word ‘ or ’ between ‘ constructed ’ and ‘ maintained ’ into ‘ and. ’ I do not think the alteration is necessary.”

The motion was then, by leave of the Council, withdrawn.

SECTION 356.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words “ with the approval of the Corporation ” be inserted after the words “ General Committee ” in line 1 of sub-section (1) of section 347 (now 356), and also after the words “ General Committee ” in lines 1 and 2 of sub-section (3) of section 347 (now 356).

He said :—“ I would ask the Council to turn for a moment to sub-section (1) of section 347 (now 356). That sub-section says :—

“ . . . schemes and plans of proposed public streets.”

"That seems to be a very large work affecting the public in which the Corporation ought to be permitted to have a voice. It is because of the character of the work that I should like to move the amendment which stands against my name. Public streets mean very large works, involving a large expenditure, and they are matters of great public convenience or inconvenience, as the case may be. I think, Sir, that it is as well in a matter like this, where the interests of the public are so intimately concerned and where a large outlay has to be incurred, that the Corporation should have a voice. Of course, the executive part of the work may be done by the General Committee. I do not wish to disturb that, but I think the words 'with the approval of the Corporation' should be added. So far as the executive part of the work is concerned, that may be left, as under the section, to the General Committee; but I feel, after having regard to the large expenditure which will be incurred in works of this kind and to the considerations of public convenience which will be involved, it would be as well that the Corporation should have something to say. That is with regard to the first part of my amendment. The second part of the amendment is to insert the words 'with the approval of the Corporation' in lines 1 and 2 of sub-section (3) of the section. I can say at once that I do not put it on the same footing with the first part of the amendment. Public streets in bustees are not so important as public streets in the town. Therefore, if the Council would object to the second part of the amendment, I do not wish to press it. But I do think, that with regard to public streets, where a large expenditure is to be incurred, the approval of the Corporation should be obtained."

The Hon'ble MR. BAKER said:—"I think the Hon'ble Member is under some misapprehension. This section only relates to the preparation of projects. The effect of the amendment would be that it would not be open to the General Committee even to prepare a project for a new street without having obtained the previous approval of the Corporation. I am sure the Hon'ble Member does not contemplate that."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I think the Hon'ble Member is right. I had overlooked that. I am much obliged to the Hon'ble Member. I beg to withdraw both proposals."

The motion was then, by leave of the Council, withdrawn.

SECTION 357.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to sub-section (1) of section 347A (now 357):—

"Provided that the Chairman shall acquire such land through a Deputy Collector, who shall not be subordinate to the authority of the Chairman."

He said:—"I understand that it is the intention of the Hon'ble Member in charge of the Bill to offer a strong opposition to this section; therefore I suggest that it be taken up in connection with an amendment which stands against my name respecting the land acquisition section. I think that would be the most convenient course, if Your Honour has no objection and my hon'ble friend has none."

The Hon'ble MR. BAKER said:—"It will be more convenient to take it up later, Sir, as the Hon'ble Member proposes."

The Hon'ble the PRESIDENT said:—"I assent to this course."

The consideration of the amendment was accordingly postponed.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 347A (now 357), sub-section (2), proviso, for the words "the capitalised value of" be substituted "twenty-five times."

He said:—"My intention in moving this amendment is to prevent needless litigation as much as possible. If the section is allowed to retain its present

form, who is to decide what is the capitalised value of the annual sum? I can well anticipate that there will be litigation, and if section 640 (*now* 617) does not apply there will be protracted litigation in the Civil Courts."

The Hon'ble Mr. BAKER said:—"Section 640 (*now* 617) says 'any municipal authority or person.'"

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, in reply, said:—"Even if section 640 (*now* 617) does apply, there will be litigation, though, perhaps, not very expensive. The owner will probably say, 'I am not liable to pay more than twenty times,' and the Corporation will say, 'we are entitled to get at least thirty times.' The result, of course, will be litigation. The words I suggest will, I think, make the section workable and practical."

The Hon'ble Mr. OLDHAM said:—"As the amendment stood, the proposal was that it should be twenty times the annual value. That was the only objection we found to it. I think the 'twenty-five times' should be accepted."

The Hon'ble Mr. BAKER:—"There is no objection. I agree with the Hon'ble Mr. Oldham."

The motion was then put and agreed to.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved that in section 347A (*now* 357), sub-section (5), line 3, after the word "of" the words "by public auction" be inserted.

He said:—"With reference to this amendment, I have been in communication with the Hon'ble Member in charge of the Bill, and also with the Chairman of the Corporation, and they are both of opinion that, unless some proviso is added to meet exceptional cases, the whole thing will be impracticable. I, therefore, propose, with your permission to put in these words:—

'by public auction, unless the General Committee, for special reasons, to be recorded in writing, otherwise directs.'

"My suggestion is that the disposal of such property should ordinarily be by public auction, and that only in exceptional cases the sale should be by private arrangement. I think this is in accordance with the present practice, and there can be no possible objection to it. Sometimes a new street is opened out, and it is decided that the lands on both sides are not to be disposed of for some years. But some influential person, perhaps, a friend of some of the Commissioners, lives in the locality, and he manages to secure the land he wants on very favourable terms. I have no special case in view, but I have been informed that such things have occurred. I think that the general rule ought to be the disposal of the lands by public auction, and that a provision to that effect should be embodied in the law."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"The present practice, as my hon'ble friend has just observed, is to sell by auction; but there may be cases where it is not desirable to sell by auction, and in those cases the sale is effected privately. I have no objection to offer to the amendment, but there was one observation made by my hon'ble friend to which I feel bound to take exception. He referred to cases where he said the personal influence of Commissioners had been improperly exercised in connection with these sales. He appeared to rely upon hearsay evidence, and, as I have personal knowledge which will set at rest any evidence of that character, I think I am entitled to make a statement. Some time ago a Commission of Enquiry was appointed by the Corporation to enquire into the conduct of a certain Commissioner. On that Commission were the Chairman, Mr. Nalin Behari Sircar and myself among others. Certain petitions had been presented to the Corporation with reference to the particular Commissioner in question, and it was thought desirable that a Committee should be appointed for the purpose of making an exhaustive enquiry into the whole

matter. The Committee have just finished their labours, and before we resigned we were in a position to send in our report. That report was acquiesced in by Mr. Bright, and the sum total of it was that the Commissioner stands absolutely absolved in our deliberate and unanimous judgment of all the allegations brought against him. As my friend has referred to the exercise of personal influence, I think it is well that I should make an authoritative statement regarding this matter which was publicly enquired into by a competent Committee of Enquiry with the result that the Commissioner has been absolutely absolved of all the charges brought against him."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I did not intend to insinuate anything against any particular Commissioner, and if what I did say is capable of such construction, I will at once withdraw it."

The Hon'ble MR. BAKER said:—"I think, Sir, there is no objection to accepting this amendment. The present practice is to sell by public auction, and, as the Hon'ble Member says, that practice should be adhered to, except when it is desirable to do otherwise."

The Hon'ble MR. BOLTON said:—"It seems to me, Sir, that a provision for a sale by public auction, would give almost as much opportunity for the exercise of personal influence as the section now stands in the Bill. I do not say that there has been any improper action in the past; but, if there is risk of such action, it will exist in the case of sales by auction also. For instance, it would be possible for interested parties to keep buyers away from the auctions, in order that the lands or buildings may be knocked down at low prices. I think it would be enough to add to 'shall be disposed of by the General Committee' the words 'after public advertisement'."

The Hon'ble MR. APCAR said:—"I support the Hon'ble Mr. Bolton's proposal. I think it would be a good thing to let these matters be widely known. As for a public auction, it is for the General Committee to conduct the sales as they choose, and I quite agree with the Hon'ble the Chief Secretary in what he has said regarding the abuses which might attend public auctions."

The Hon'ble MR. BAKER said:—"I have no objection to accepting the words proposed by the Hon'ble Mr. Bolton if the Hon'ble Dr. Asutosh Mukhopadhyaya is willing also to accept them."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Yes, I am quite willing to accept those words, and will substitute them for the terms of my amendment."

The motion was then put in the amended form and agreed to.

SECTION 364.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for the words "the General Committee may, with the consent of the owner, sell the site by public auction," in lines 5 and 6 of sub-section (1) of section 363 (*now* 364), the following be substituted:—

"the Corporation shall, upon the requisition of the owner, acquire the said site on payment of a reasonable price,"

and that sub-sections (2) and (3) be omitted.

He said:—"Sir, the amendment is substantially this. A person being the proprietor of a certain plot of land is unable by the operation of your building regulations to use it as a building site. He wants to use it as a building site, but your rules come in the way, and he is not able to do so. He is not able to use it for building purposes, because considerations of public health and convenience have rendered it necessary on the part of the Corporation to make rules regarding certain sites, and it is in consequence of these rules that

he is unable to erect a building on the land. It seems to me, Sir, to be fair and equitable that, being deprived of the right to use his land as a building site, he should ask the Corporation to purchase it from him at a reasonable price. Sir, he suffers on public grounds; he suffers by reason of the rules which the Corporation for purposes of public health have found it necessary to enact; and it seems to me that it is only right and proper that he should get a fair measure of compensation for not being able to utilise his land in the way he intended, and that the land should be taken over by the Corporation. Of course, I do not overlook the difficulties surrounding the question. My hon'ble friend will ask me what is the Corporation to do with the land? It would be so much public expenditure for nothing. Sir, that is a consideration which must not be overlooked. But, after thinking over the matter most carefully, it struck me that there may be a *via media* which I should like my hon'ble friend to accept if he could see his way to do so. That *via media* is this: that at any rate for the next year or so the amendment should be given effect to. That is to say, for the next year or so, before the ratepayers have become completely familiarised with the rules we are now about to enact, it would be desirable to have a provision of the kind I suggest. In other words, for the next two or three years, if persons in possession of plots of land are not allowed to build upon those plots in consequence of the operation of the building rules, such persons would be entitled to go up to the Corporation and ask that their sites should be taken over at a reasonable figure. We have, Sir, a section somewhat analogous to the suggestion I make. If any repairs have been done to a privy within the last three years, and if the Corporation calls upon the person to make further repairs, then we have provided that the expenditure shall be met out of Municipal funds. Well, the suggestion I have made follows the lines of that section. Here are your building rules. These rules, which are enacted for the public welfare, preclude a particular party from making use of a site for building purposes which he wanted to use for those purposes. It may be, when this man purchased his site, these rules had not come into operation, but that, while he was waiting for an opportunity to build, they were brought into force. He is, therefore, placed in a difficult position. It seems to me that it is only right and fair that at any rate for the next year or so persons placed in that situation should be entitled to ask the Corporation to take up the site on payment of a reasonable compensation."

The Hon'ble MR. BAKER said:—"I think, Sir, that this proposal, as it stands, is a most unreasonable one. The Hon'ble Member has correctly pointed out that the effect of it would be to saddle the Corporation with a large number of small unserviceable pieces of land dotted about all over the city, which cannot be put to any public use and which would almost certainly be encroached upon by neighbouring owners. The Hon'ble Member then suggests that for the next two years or so the Corporation should be required to buy these pieces of land, but not after that. I do not see, Sir, that the case is any different during the first two years that this Bill would be in force from what it would be afterwards. The fact remains that the Corporation would be inundated with applications from people to buy these pieces of land, and it might in consequence be involved in very considerable financial difficulties. The analogy between this case and that of the privies to which he referred, and in which we undertook to make a contribution from Municipal funds under certain conditions, is by no means a good one. The difference is this, that in the case of the privies we call upon the owner to incur certain expenditure in order to conform to the new rules, and it is only in such a case that we undertake to bear a portion of that expenditure. In this case the owner of the land incurs no expenditure; he is not required to put his hand into his pocket in any way. The idea which underlies the amendment is this, that, if a person has land, he is at liberty to utilise that land in any way he thinks fit. But that idea is totally unsound. No person has any right to use his property in such a manner as to endanger the health of his neighbours, and if a man has purchased a piece of land, which is so small or in such a position that to build upon it would adversely affect the public health, that man deserves, in my opinion, no compensation."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I did not really expect that a proposal so unreasonable as this would come from my hon'ble friend, Babu Surendranath Banerjee. The Hon'ble Member in charge of the Bill has very correctly pointed out what the effect of this amendment would be; and even the most superficial examination of the question will show that the proposition is based upon fallacious grounds. In the first place, there is no authority for the assumption that every member of a civilised community is entitled to use his property just as he pleases; his rights are restricted by the rights of his neighbours. In the second place, it is equally inaccurate to say that when the rights of an owner are so restricted he suffers by reason of the rules which the Corporation for purposes of public health have found it necessary to enact; it is not the Corporation, but this Legislature, which enacts this rule of law; and my hon'ble friend, in order to be logically consistent, ought to propose that we, and not the Corporation, should compensate the unfortunate owner. It will also be noticed that under the section, it will be optional for the General Committee to sell the site by public auction. If the amendment of my hon'ble friend were accepted, it would be obligatory upon the Corporation to acquire the site on the payment of a reasonable price. It seems to me absurd that all the rate-payers in the city should provide the price of a piece of land which belongs to a particular rate-payer, and which he is not allowed to build upon. To my mind, if owners of such pieces of land are allowed to do as is proposed, if I were in possession of a diseased horse which was good enough for work, but which I was not allowed to drive, I might as well go to the Corporation and ask them to take it over from me at a reasonable price!"

The Hon'ble RAJA RANAJIT SINHA RAHADUR OF NASHIPUR said:—"I am sorry I cannot support the amendment, which is unreasonable. I cannot understand what the Corporation would do with these pieces of land after acquiring them. I do not think the money of the rate-payers should be utilised for buying up plots of land which are absolutely useless to the public."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I do not think the analogy of the diseased horse is quite a correct one. The diseased horse is not diseased from the operation of any law which may have been enacted for the benefit of the community or the Government. The horse is rendered useless by the operation of natural causes. The land is rendered useless by the operation of a new law, of which the person who owns the land is absolutely in ignorance. When he purchased the land no such rules were in existence, and I am surprised that so sound and so able a lawyer as my hon'ble friend should have brought forward an argument so absolutely unreasonable as this. But we live in a land of surprises, and sometimes we find even lawyers tripping in this fashion. I just want to put a concrete case to my hon'ble friend the Member in charge, and ask him what he thinks about the justice of such a case. Suppose a person had purchased a piece of land now, in ignorance of the fact that any new building rules are likely soon to come into operation; he is absolutely in ignorance of the new law, and he purchases a piece of land in the hope of erecting by and by a building upon it. Being a poor man, he is not able to find the means to construct the building until, say, next May. Then he begins to build, but the new rules have in the meantime come into force. The Chairman comes down upon him and says: 'You cannot build there; the rules stand in the way.' Now I should like to know what the Hon'ble Member in charge of the Bill thinks of the justice of a case of that description. Here is this poor man; he purchases a site in the hope of being able, when he has raised sufficient money, to erect a building upon it. He knows the present rules, and he knows that in them there are no difficulties in the way of his building; but in the meantime the new law comes into operation, and it is no longer possible for him to build. Is not that a hard case? If it is a hard case,—and it must be admitted to be so,—is it not right and proper that we should devise a remedy? If you limit the period, say, to one or two years, the justice of the case will be amply met. I cannot admit that it is an unreasonable proposal. Let us not do injury to private individuals in the name of public right. We ought to proceed cautiously, and we ought to see to it, that in the name of public health and of public right we do nothing to injure the rights of private individuals. I am

convinced that there is a tampering with private rights under this section as it stands, and, that being so, I feel it is necessary to move this amendment. If the amendment is unacceptable, I recommend a compromise, which I regret to see my hon'ble friend also seems to think is objectionable upon the lines I have suggested."

The Hon'ble MR. BAKER said:—"May I also give one concrete instance on the other side? Up to the year 1882 there was an import-duty imposed on piece-goods and yarn imported into Calcutta. When the duties were taken off in 1882 there were large stocks of piece-goods and yarn in Calcutta on which the duty had been paid. Does the Hon'ble Member think it would have been reasonable in that case to require the Government to take over those stocks of yarn and piece-goods, at cost price?"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I do not consider that to be a good analogy. It is a totally different case. That is a matter of trade and speculation. The tradesmen are bound to take the consequences of their action, be they good or bad. That is quite a different matter. A man wants to build a house, probably to live in it. He is not speculating, nor is it done in the way of trade, and I am very much surprised that the difference between the two cases should not have struck my hon'ble friend as unquestionably the two matters stand upon a wholly different footing."

The motion was then put and lost.

SECTION 367.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 365 (now 367), after sub-section (4), the following be inserted:—

"(4a) The decision of the Local Government upon such objections shall be final."

He said:—"I take it that this is the intention of the framers of the law. I do not think it desirable that people should be permitted to litigate for purposes of settling these matters. The section relates to the power of regulating the erection of certain classes of buildings in particular streets or localities. It is provided that, if the General Committee have given public notice of their intention to do certain things, objections may be preferred which will be considered, and the whole question will be sent to the Local Government for final orders; sub-section (4) then provides that 'the Local Government, after considering the objections, may confirm the declaration, and, before doing so, may modify it, but not so as to extend its effect.' My object is to give finality to the decision of the Local Government, and thus prevent either appeals to the Government of India or expensive litigation in the Civil Courts."

The Hon'ble MR. BAKER said:—"I do not see that the addition of these words will make the decision of the Local Government any more final than it was before. There is no higher authority than the Local Government; therefore, in my opinion, the words are quite unnecessary."

The motion was then put and lost.

SECTION 370A.

The Hon'ble BABU SURENDRANATH BANERJEE moved that section 370A be omitted.

The Hon'ble MR. APCAR also moved that section 370A be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"This is rather an important matter, and I will just read out the chief points in the section. The section says:—

'370A. (1) The Local Government may make rules—

- (a) to confer and impose mutual rights and obligations upon owners of adjacent masonry buildings or lands as regards the erection, re-erection, use, maintenance, alteration and repair of party walls,
- (b) to regulate the exercise and enforcement of such rights and obligations, respectively,

- (c) for apportioning between such owners any expenses incurred in the erection, re-erection, maintenance, alteration or repair of such walls, and for requiring security to be given by one owner to another for the payment of his share of such expenses,
- (d) for determining the amount of compensation (if any) to be paid by any such owner to any other such owner for any damage sustained by the latter in consequence of the erection, re-erection, alteration or repair of such walls, and
- (e) to facilitate reference to arbitration for the settlement of disputes arising between any such owners in the exercise or enforcement of any rights or obligations conferred or imposed by such rules, and to regulate the appointment, powers and procedure of arbitrators and the payment of the costs of such references.

“(2) Rules made under sub-section (1) may authorise an owner of a building or land to place the footings of a party wall below the surface of adjoining land belonging to another owner.”

“In the original Bill we had no such section as this all. It was introduced and laid before the Select Committee, and we had, I may say, a very animated discussion about this question of party walls. Both my hon’ble friend Babu Norendra Nath Sen and myself were strongly opposed to the introduction of this section or any section of a similar character. The chief ground upon which the section was supported was that, because such rules and regulations existed in English towns, we should have them here. I do not consider that to be a good argument at all. Circumstances here are totally different from the circumstances which obtain in England. Space is not so valuable here as in London, and here the people are anxious to have their own walls, and not to build their walls on the land of other people. We do not want these rules and regulations; and why should we have them? My hon’ble friend suggested that, although a section like this may not be necessary now, it would be very useful hereafter. But to that my reply is ‘sufficient unto the day is the evil thereof.’ As administrators I do not see the necessity for us to take such large views and to consider such possibilities as these. We ought to be content to deal with the difficulties and dangers which arise from day to day. I think we ought to content ourselves with those difficulties, and not to legislate for possibilities which may arise in the distant future. My contention is this, that difficulties of the kind referred to in this section in regard to party walls are not in the least likely to arise in this country. I am, on the other hand, afraid of a suggestion like this, because there are litigious people about, and they may take advantage of such a section. I do not think the section is necessary, nor do I think it is wise to foster litigation. I think, on the contrary, we should try to discourage litigation as much as possible, and I trust the Council will not consent to empower the Local Government to make rules in regard to a matter which is likely to be prolific of litigation in the future.”

The Hon’ble MR. APCAR said:—“If I may be pardoned for saying so, those who are responsible for this Bill do not, it is evident, hold landed property in Calcutta, and have no desire to do so. I may say that I think, if they did, they would be a little alarmed at the prospect that the rights of owners should be interfered with on the lines suggested in this section. The rules are made in order to meet the difficulties that may arise hereafter. But under them the existing rights of parties may be interfered with, and in view of this I have myself taken alarm. Inasmuch as there is no necessity for these rules, I understand at the present time, I hope that their enactment will be postponed until there is some prospect of those difficulties arising which are in the minds of the authors of this section. Conditions in Calcutta certainly are widely different from those existing in London, and I think we might wait for a little while in order to be able to see what provisions are required here if the Government are not prepared to formulate them now. If they are wanted then they might be brought forward in proper form, not in the form of delegation of authority to make rules, but as a portion of some enactment. There would then be an opportunity given for those who are interested to represent their views. There ought, I think, to be some deliberation and consideration upon so important a subject before any hard-and-fast rules are introduced.”

The Hon’ble MR. BAKER said:—“The Hon’ble Mr. Buckley has been good enough to undertake to reply on this matter for the most part, but there is just

one word I should like to say. To begin with, the Hon'ble Mover of the amendment, the Hon'ble Babu Surendranath Banerjee, and also the Hon'ble Mr. Apley to a less extent, said that the reason why this section was inserted in the Bill was that we had party walls in England and rules similar to these were in force there; therefore, we ought to have them here. Now, Sir, I think the Hon'ble Member's recollection has somewhat played him false; that was not the reason at all. The reason why it was thought necessary to insert provisions of this kind in the Bill was this. Under the operation of the Bill, continuous building will become much more frequent in Calcutta than it has been in the past, and when you have continuous building you must sooner or later have party walls. Therefore, although party walls have not been common in Calcutta in the past, we fear that it is inevitable that their number will be increased in the future. Now, party walls in England have been a very fruitful source of litigation everywhere, and we thought it would be prudent to make such a provision as we have here in advance, to prevent litigation in Calcutta. The Hon'ble Member said 'sufficient unto the day is the evil thereof.' Sir, that is exactly what we think too. We are not legislating; we are merely taking the power to legislate when the occasion arises. The provisions of the building chapter in this Bill would be incomplete unless we made a provision for a state of things which is inevitable."

The Hon'ble MR. HANDLEY said:—I should like to make a remark regarding this section. The Local Government professes to be able to make rules to confer and impose rights upon parties. I must say it has given rise to some doubt in my mind how Government can confer rights which do not already exist by law."

The Hon'ble MR. BAKER said:—"Confer rights and impose obligations."

The Hon'ble MR. HANDLEY said:—"I only wish to draw attention to that. I do not quite see how Government can confer rights unless they make a statutory provision. No doubt this rule of party-walls was derived from the Roman law, but how far it has been applied to Calcutta I do not know. Probably under some ancient statute of George II, the English common law was applied to the city of Calcutta, but how far that would introduce the common law of England relating to party-walls in Calcutta I am not prepared at this moment to say. I only wish to draw attention to the possible legal difficulty that might arise, or how far the Local Government can make rules to confer rights which do not already exist."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I agree with the Hon'ble Mr. Handley. The difficulty to which he alludes is a serious one, and we cannot be too cautious about the matter."

The Hon'ble MR. BUCKLEY said:—"This section of the Bill was introduced with the intention of giving assistance and help to owners of property in Calcutta. Under the existing law any one can build a house a small distance away from his neighbour's, but under the rules in Schedule XIV-a (now XVII) of this Bill he is not allowed to do so. He can do one of two things: he must either build his house at a certain minimum distance—I think it is six feet—away from the neighbouring house, or he must build it actually in contact with the next one. If he builds in actual contact with the next one, to a certain extent it puts him at a disadvantage, and also from a purely constructional point of view rather of difficulty in the building of the house. First of all, it is obviously a great waste of space to build a house close up to another one so that there are two walls in actual contact. The Building Regulations of America actually go so far as to say that it is a constructional advantage to both houses if there is one wall rather than two, and the action of this Bill will certainly be to compel people in future to stick their houses against one another. If they do that, there is a practical difficulty in the matter of laying a foundation. A man who has to build a house right up against his neighbour's house is more or less compelled to lay his foundation under the walls of his neighbour's house, and there are various difficulties in doing that. In the English law there is a very elaborate series of rules, extending over twenty sections of the London Building Act,

which prescribe all sorts of regulations entirely framed with the idea of assisting the owners. It seems to me that it is very desirable that the Local Government should have power of making rules which will be of assistance to the people. No doubt here in Calcutta the building hitherto has been very different to what it is in London. It certainly will not be so in future; indeed it cannot be so if the Bill is carried out."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said :—"That would be an interference with the rights of owners. There is no intention whatever of doing that. The only intention is to assist and help the owner, so that he may get the full benefit of his property. If you were to take all the streets in Calcutta which are now built with houses away from one another and houses close to one another and were to assess the value of the double walls either existing now or which will exist in future, you would find the value of property wasted in those walls is enormous, and it is evident to everybody that there should be rules for helping them to utilise their property as far as possible."

The Hon'ble MR. OLDHAM said :—"I was one of the advocates for the introduction of these measures in Select Committee, and when my hon'ble friends were speaking against them I do not think they realized how greatly the provisions of this Bill will contract the amount of space which may be occupied by the walls of houses and solid masonry in Calcutta. That contraction will be great, because we have provided in the case of continuous building that one-third of the space occupied by the premises must be open to the air. The Hon'ble Mr. Apear, looking towards us, has said that we had not the experience which he possessed of being house-owners in Calcutta; but some of us are in the position of managers of house-property in Calcutta, and, speaking of some of the premises under my own control, if I may be permitted to quote Virgil in this connection, I would say *jam proximus ardet Ucalegon*. For there are some premises on which we are pressing Government to spend from three to six lakhs of rupees in additions, and, unless some provisions like these can be resorted to, I do not know how the necessary space can be obtained."

The Hon'ble BABU BOIKANTA NATH SEN said :—"I think I ought to offer a few remarks on this amendment. Our Courts are Courts of law, equity and good conscience. The existence of these party walls will, no doubt, give rise to nice questions of equity, and Your Honour knows, and everybody else in this Council knows, how difficult it is to lay down stereotyped hard-and-fast rules for equitable principles when they have to be applied in concrete cases. It would be difficult, as a good many contingent circumstances will have to be contemplated by Your Honour. Rules will have to be framed, and it would be fettering the hands of the Courts with regard to the discharge of their duties. The questions for decision would be found nice and delicate, and at times, when rules are omitted, the Courts would have to exercise their discretion in applying equitable principles. It is much better, therefore, to leave any enactment in the shape of rules for the decision of questions which will arise between the parties. Let the Courts have their full freedom and full discretion in deciding upon questions which would involve some equitable principles."

"Then it has to be assumed that new rights will not be created. I believe it to be the very essence of the thing that these rights must imply obligations; they cannot be created by these rules; they exist. Interpretations will have to be put, constructions will have to be put, and the Courts will have to decide upon the questions which may arise. I venture to think, therefore, that this wording 'to confer and impose mutual rights' is rather against the principles I am attempting to enunciate. It would be better, if the provisions in the Bill be intended to be retained, to define 'mutual rights.' Instead of 'conferring and imposing mutual rights and obligations' it would be in consonance with axiomatic principles to substitute 'define' for 'confer and impose.' With this observation I beg to support the motion."

The Hon'ble BABU JATRA MOHAN SEN said :—"I am strongly in favour of this motion. No case seems to have been made out for a provision like this

to be introduced here in Calcutta. If a provision of this kind is introduced here, I think the best way would be to introduce it by a separate Bill altogether, and that provisions be made in the shape of a law, and this may be done irrespective of this Bill, and a separate law may be passed hereafter if necessity arises."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I quite respect the motives which have led my hon'ble friends to insert this provision in the Bill. I quite believe that the object is to give owners the assistance which owners stand in need of to build their houses when the new provisions of the Bill will come into operation; but I desire to point out that we have got continuous houses in Chitpur and other parts of the town, and the want of such a provision has not been felt. Any one visiting Chitpur will see the houses there run like English houses along the street. They have got continuous houses; they have got no party walls; there are double walls on both sides of Chitpur; the land is valuable there, but they have not felt the necessity of a provision like this.

"The other difficulty to which my hon'ble friend Mr. Buckley has referred is the difficulty about foundations. They have found no difficulty in that respect either at Chitpur. We do not need such a law; the necessity for it has not been felt; then why legislate in advance? I could understand it if you were legislating in advance, if the legislation adopted involved a distinct reform or a distinct convenience. I am not aware that any great convenience will follow; at any rate the want of that convenience has not been felt, and, when there is a strong body of opposition to this legislation on altogether new and distinct lines on the part of those who represent land-owning and occupiers' interests, I think the Legislature ought to defer to expression of opinion and abandon this section. I do not think there is any necessity for it. On the other hand, a section like this is likely to create alarm. People will come to the conclusion that a section has been inserted which fosters litigation and contention. It seems to me on the whole it is best to give up the section. I think all these circumstances ought to be taken into consideration before the Legislature enacts a provision like this."

The Hon'ble MR. ARUN, in reply, said:—"If those who are conversant with the subject think that legislation on the subject is necessary, I would not oppose the enactment of a definite law; but what I feel about this particular section is this: that rules are to be made which are to 'confer and impose mutual rights and obligations.' I think we ought not to give power and authority to make rules for such a very extreme purpose. I think it would be advisable for us to know what is meant by this provision. What are the mutual rights and obligations which the Government intend to confer and impose? If it is advisable to have a law on the subject, I think proposals for it should be submitted for proper consideration and deliberation in Council. I am not prepared to say that there shall be no regulations at all under the authority of the Legislature, but I think that we ought not to give this extreme power, at this juncture, to the Local Government when we do not know what the rules will be or what shape they will take in order to confer and impose these rights and obligations."

The Hon'ble THE PRESIDENT said:—"I propose that the further consideration of this section stands over till to-morrow.

The further consideration of these motions was then postponed till the next sitting of the Council.

SECTION 373.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that in section 383 (now 373), line 5, for "thirty" be substituted "fifteen."

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 383 (now 373), line 5, for "thirty" be substituted "seven."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"Section 383 (now 373) says:—

"Within thirty days after the receipt of any application made under section 371A (now 370) for approval of a site, or of any information or further information required under

Schedule XIVA (*now XVII*) or within thirty days after the Chairman has been satisfied that there are no objections which may lawfully be taken to the approval of the site, the Chairman shall, by written order, either approve the site or refuse, on one or more of the grounds mentioned in section 367 (*now 377*), to approve the site."

"It will be observed that 30 days is the time fixed for the first alternative' that is to say, 30 days must elapse from the time of the receipt of any information or further information required under Schedule XIVA (*now XVII*). I venture to think that the same period is not required after the Chairman has been satisfied that there are no objections which may be taken to the approval of the site. It seems to me that such a long time as a month is not necessary, and it would be better to put in 15 days, because the Chairman will necessarily have the previous 30 days to consider the matter."

The Hon'ble Mr. BAKER said :—" I have been in communication with Mr. Bright about this matter, and I am prepared to accept the present amendment, but not the subsequent one of the Hon'ble Babu Surendranath Banerjee, to reduce the period to 7 days. We agree that 15 days ought to be sufficient, but 7 days will certainly not be enough, having regard to the size of the Municipal Office and the number of these applications."

The Hon'ble Mr. APCAR said :—" I did not send in a notice of any amendment in this respect, but I myself thought, independent of my hon'ble friend Babu Surendranath Banerjee's opinion in the matter, that 15 days was the proper time, and I think that would be sufficient."

The Hon'ble BABU SURENDRANATH BANERJEE said :—" My amendment is 7 days as regards that particular matter, but then it is 15 days as regards another matter."

The Hon'ble the PRESIDENT said :—" At the present moment we are discussing line 5 of section 383 (*now 373*), the motion of the Hon'ble Dr. Asutosh Mukhopadhyaya. Will the Hon'ble Babu Surendranath Banerjee speak on his motion No 231, that 'seven' be substituted for 'thirty' in line 5 of section 383 (*now 373*) ?"

The Hon'ble BABU SURENDRANATH BANERJEE said :—" Yes, Sir, I will speak to that.

"What I wanted to say with reference to this motion was this: Under the present law you give 60 days practically for the approval of the site and of the building. The present law is this: if an application is made for the approval of the site, that application must be sanctioned or refused within 30 days of the submission of that application. Then, if an application is made after the approval of the site for the approval of the building, the application must either be approved or refused within 30 days. Therefore it comes to this, that under the present law the application for a building, including the application for a site, must be refused or approved within 60 days, assuming that the application for the construction of the building follows immediately after the disposal of the application for the approval of the site. Within 60 days the application must be refused or granted. That is the present law. Under the proposed law an indefinite amount of time is taken up, and that is the point which I want the Hon'ble Member in charge of the Bill to consider. The Chairman may take 60 days to be satisfied about a matter. Suppose I make an application for the approval of a site to-day, the Chairman must be satisfied that there are no objections. No definite length of time is suggested within which he must be satisfied. He may be satisfied, or he may not be satisfied even within two months' time. There is no time fixed there at all, and after he has been satisfied, then within 30 days he may approve or refuse. Therefore it comes to this, that an application being made for the approval of a site, the Chairman, in order to be satisfied, may take an indefinite length of time—60, 90 or 100 days; there is no limitation of time, and after being satisfied he may take one month to communicate satisfaction. The Council have accepted the amendment of the Hon'ble Dr. Asutosh Mukhopadhyaya that 15 days be substituted for 30 days after the Chairman has been satisfied. But the point is this: what

safeguard have you that a particular rate-payer will not be indefinitely postponed or postponed for a very long time until the Chairman has been satisfied that the site is to be approved or refused? Therefore, I think there ought to be a limitation as to the time within which the Chairman must be satisfied. That is not laid down in the section. And the same remarks apply to the approval or rejection of the plan for a building. An application for the construction of a building is made, and then within 30 days after the Chairman has been satisfied, the approval or refusal is to be communicated to the party. The Chairman may take two months to be satisfied as to whether a plan should be approved or not. Therefore, there is no limitation as to the time within which the Chairman is to be satisfied with regard to the building. That is my first difficulty with regard to the matter.

"Then I desire to point out—and I think the Hon'ble Member in charge of the Bill will at once see the justice and cogency of my argument—the Chairman takes a month for signifying his approval to the plan of the building. He takes a month also for signifying his approval to the site. The two things stand on altogether a different footing. The site may be approved by simply looking at it. The approval of the building is a much more complicated matter. Therefore, Sir, if you take a month for the approval of a building, why should you take a month for the approval of the site? I think you ought to take less. Why should a rate-payer be put to unnecessary delay? I am quite aware that that is the present law. It is a month for the site and a month for the building; but under the present law there are not these difficulties. The Chairman is not given an indefinite length of time within which he has to be satisfied as to the site or as to the plan. If within that time the Chairman is not satisfied, the law empowers the man to proceed without the sanction of the Corporation. Therefore that is my difficulty, and I suggest that, instead of thirty, fifteen days should be given for the approval of the site. I am prepared to accept my friend the Hon'ble Dr. Ashutosh Mukhopadhyaya's amendment, that, after the Chairman has been satisfied, within 15 days he must communicate his order; but I also suggest a limitation of the time within which the Chairman must communicate his satisfaction or disapproval. He must not be permitted to take an indefinite length of time. Therefore my first contention is this: that if you need 30 days for approving the plan of a building you do not need 30 days for the approval of the site. The two things stand upon a totally different footing altogether. If you need 30 days for approving the plan of the building, you need only half that time for approving the site. That is my first contention.

"Secondly, the Chairman ought not to be permitted an indefinite length of time within which he is to be satisfied as to the eligibility of the site or the goodness of the plan. There must be a limitation of time imposed within which he must communicate his satisfaction or the reverse. And then, Sir, I am perfectly willing to accept my hon'ble friend Dr. Asutosh Mukhopadhyaya's suggestion that instead of seven days which I have recommended the time should be 15 days within which the communication of the order of the Chairman should be made to the party.

"Those are the suggestions which I venture to make. I should like the Hon'ble Member in charge of the Bill to consider the matter from the point of view I have suggested. There would be of course acceleration fees. I do not refer to that, but an underling would keep a thing back on the excuse that the Chairman is not satisfied, and the person must pay something. My friend, the Hon'ble Mr. Apear, suggests that this is perfectly true and we ought not to hold out a premium to practices of this kind. I strongly insist upon a limitation of time within which the Chairman must communicate to the rate-payer his approval or disapproval."

The Hon'ble Mr. BAKER said:—"I have accepted the amendment of the Hon'ble Dr. Asutosh Mukhopadhyaya. The greater part of what the Hon'ble Babu Surendranath Banerjee has said would have come in appropriately on amendment which stands in the name of Dr. Asutosh Mukhopadhyaya."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"My friend's amendment proceeds upon proving a negative, because he cannot satisfy that there are no objections."

The Hon'ble THE PRESIDENT said :—" Will the Hon'ble Member in charge of the Bill reply now to the remarks of the Hon'ble Babu Surendranath Banerjee?"

The Hon'ble MR. BAKER said :—" I should like to hear what Hon'ble Members have got to say before I reply to these amendments."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA's motion was then put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE said :—" I withdraw the following motion in favour of the one just carried :—

that the words 'or within thirty days after the Chairman has been satisfied that there are no objections which may lawfully be taken to the approval of the site' in lines 4, 5, 6 and 7 of section 383, be omitted."

The Hon'ble BABU SURENDRANATH BANERJEE's motion was then, by leave of the Council, withdrawn.

The Hon'ble THE PRESIDENT said :—" Amendment No. 228 corrects apparently a misprint which does not exist in my copy of the Bill :—

that in section 383 (*now* 373), line 7, for 'wilfully' be substituted 'lawfully'."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said :—" In my copy the words are 'no objections which may *wilfully* be taken'."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA and the Hon'ble Babu JATRA MOHAN SEN, by leave of the Council, withdrew the motions standing in their names that in section 383 (*now* 373), line 7, for "wilfully" be substituted "lawfully," it being explained that the former word was a misprint, which would be duly corrected.

The Hon'ble BABU SURENDRANATH BANERJEE moved—

(No. 229) that for the word "thirty" in line 1 of section 383 (*now* 373), the word "fifteen" be substituted;

(No. 230) that the words "or within thirty days after the Chairman has been satisfied that there are no objections which may lawfully be taken to the approval of the site," in lines 4, 5, 6 and 7 of section 383 (*now* 373) be omitted.

He said :—" I have already spoken on this amendment: that for the word 'thirty' in line 1 of section 383 (*now* 373) the word 'fifteen' be substituted; but the Hon'ble Member in charge of the Bill has said nothing whatever about this. I am sorry I have not been able to make myself understood. I generally can make myself understood.

"Section 383 provides as follows :—

"Within thirty days after the receipt of any application made under section 371A (*now* 370) for approval of a site, or of any information or further information required under Schedule XIVA (*now* XVII), or within thirty days after the Chairman has been satisfied that there are no objections which may lawfully be taken to the approval of the site, the Chairman shall, by written order, either approve the site or refuse, on one or more of the grounds mentioned in section 357 (*now* 377), to approve the site."

"What I said was this: that the approval of the site and the approval of the building stand upon a totally different footing altogether. The approval of a building under section 384 (*now* 374) has to be communicated within a month, and the approval of the site has also to be communicated within a month. I do not think Sir, that is logical. If the approval of a building can be communicated within a month, the approval of a site ought to be communicated in less than a month. That is all I have got to say. I am perfectly free to admit that the present law places the two things on the same footing; but, Sir, as I have already observed, there are intermediate matters introduced in the Bill which do not find a place in the present law. The present law does not provide that the Chairman may take as long as he likes in order to be satisfied. The Bill does make a provision to that effect. The Bill says that within 30 days after the Chairman has been satisfied he is to communicate his order; but it does not lay down the limit of time within which the

Chairman must be satisfied. He may take a month or two to be satisfied. Therefore, there is considerable difference between the Bill and the present law. I say once again that if you take a month to approve the plan of a building you surely do not want a month for the approval of the site upon which the building is to stand. Therefore, if it is a month in the one case, I venture to suggest that it should be a fortnight in the other."

The Hon'ble MR. BAKER said:—"There are not two months, but one month. If a person desires to build a masonry building on any site, he puts in both the applications for the approval of the site and for the approval of the building simultaneously, and there is an express provision to that effect in the Bill, that is to say, these two periods of one month run concurrently. If a man chooses to put in the two applications together, the two periods run concurrently. Then he only has one month altogether, and it is impossible to reduce this period. The procedure is this. The application goes in first into the Municipal Office. It has to be sent to the Engineer's Department; the Engineer makes it over to one of his subordinates; the subordinate goes to the spot to make local enquiries. It goes back, is noted on, the Assistant Engineer initials it, and then it goes back to the Chairman. The number of building applications, as I mentioned the other day, is nearly 4,500 in a year, that is to say, there are 20 of these applications for every single working day; so it is impossible for them to be taken up the moment they are presented. The whole Municipal Office is a big machine, and it takes a certain amount of time for the various processes to be gone through. Any period less than 30 days would lead to difficulties of the same kind which have arisen under the present Act. The Hon'ble Babu Surendranath Banerjee says there is a difference between the Bill and the present Act, and he wishes to reduce the time allowed by the Bill to the time allowed by the present Act."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I do not want to reduce it to that point, but I want to reduce it as provided in the Bill. I want to make the time shorter."

The Hon'ble MR. BAKER said:—"I hope the Council will not agree to reduce any of these periods or to modify these sections in any way. They were all framed by the Calcutta Building Commission. The Building Commission went most carefully into this matter. They were aware—and every one in Calcutta is aware—that the Building Regulations under the present Act have been absolutely a dead-letter, and the Building Commission gave the greatest possible attention to this matter in order to remove what is admitted on all hands to have been a serious evil. This was the section which they drew up and which commended itself, as far as I remember, unanimously to the Select Committee. I do not remember any discussion being raised upon this point in the Select Committee, and I think we shall make a serious error if we reduce any of these periods or modify the sections in any way."

The Hon'ble MR. BUCKLEY said:—"I entirely agree with what the Hon'ble Mr. Baker has said. It seems to me, if I correctly understood the Hon'ble Babu Surendranath Banerjee, that he is under some misapprehension. I understood him to say that the Chairman can take a month or two months or 90 days in giving a final sanction. I do not think that is so. The procedure is this: the person who wishes to erect or re-erect a building applies for the approval of the site under section 371A (*now* 370). He also applies for permission to erect a building under section 371A (*now* 370). He may do that at the same time if he likes. Rule 32 of Schedule XIVA (*now* XVII) distinctly says he may submit them at the same time. That rule provides that—

"An application for approval of a site for, and an application for permission to erect or re-erect, a masonry building, may, if the applicant so desires, be sent together."

"These applications must be in a certain form and supported by certain documents, which are defined in rules 30 and 33 with reference to buildings. Then the Chairman can, within 30 days, call for further information. He

must call for that information within 30 days. That is rule 34, clause (2), with reference to the site and rule 34, clause (3), with reference to the building. Having received this information, he may still say it is not ample. In that case he may again under rule 34, clause (4), demand further information. If this further information is not received within three months, it is held that the application has entirely lapsed and the man must begin all over again and send in another application; but if this information is received, and approval is given, the Chairman signs the site plan and the building plan too under rule 35, Schedule XIVA (now XVII), and sections 383 and 384 (now 373 and 374). This matter, so far, is finished, but if he does not give the necessary permission, he can only refuse under section 387 (now 377) on certain defined grounds. These are, roughly speaking, that the proposals are not in accordance with the Act. Should the Chairman refuse, an appeal lies under section 385 (now 375) to the General Committee. Supposing the Chairman does not do this—if the Chairman neither gives nor withholds the permission within the time named. In that case the applicant can apply to the General Committee, who must reply within 15 days. If the man, therefore, does not get his information within the period of the second month, all he has to do is to apply to the General Committee, who must reply within 15 days. If they do not do that, then the man may assume that the permission is given and can go on with his building. I do not think there is any hardship at all. The rules are very carefully thought out, and I think they entirely meet the Hon'ble Babu Surendranath Banerjee's objections."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"I just want to point out, with reference to what has fallen from the Hon'ble Mr. Buckley, that I quite recognise the fact that the two applications must be sent in concurrently. But if the two applications are not sent in concurrently, then the rules operate in the way I have suggested. Then, Sir, my hon'ble friend in the course of his observations referred to the Chairman calling for information, and he may or may not be satisfied on receipt of the information. But suppose, Sir, the Chairman, having received the information, and there being no further information to call for, does not communicate his satisfaction or the reverse to the party. The party must wait two months and then he must apply to the General Committee, and then there is another waiting for more than a fortnight. Therefore, having regard to all these inconveniences, why should we not definitely say that the Chairman must be satisfied within a certain limit of time? I think that ought to be laid down. Why should that matter be left in doubt? That is the point I am contending for in the present amendment, now that I have accepted Dr. Asutosh Mukhopadhyaya's suggestion that the time within which orders are to be passed should be fifteen instead of thirty days."

The Hon'ble MR. BAKER said:—"I submit, Sir, there is no amendment to that effect before the Council."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I think the Hon'ble Member is taking a somewhat technical ground. If in the course of a discussion an important point is raised, I think I can crave Your Honour's indulgence to bring it forward for the consideration of the Council. It is a very serious matter and ought not to be shut out on a technical ground. I would modify that amendment with Your Honour's permission, and, if the sense of the Council is agreeable, I might modify my amendment with the view to suggest a limitation of time within which the Chairman must communicate his satisfaction or the reverse to the party."

The Hon'ble the PRESIDENT said:—"What would be the amendment which the Hon'ble Member would wish to substitute for amendment 230?"

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I would suggest the following proviso:—

'Provided the Chairman shall communicate his orders within fifteen days after the receipt of all the necessary information.'

"If Your Honour will postpone this amendment, we might take it up again later on."

The Hon'ble MR. BAKER said:—Any change that is made in these sections will require the most careful consideration, because many of them, some 20 or 30, hang together. We shall not know where we are if any amendment is made without the most careful scrutiny."

The Hon'ble MR. BUCKLEY said:—"I submit the Hon'ble Babu Surendranath Banerjee has made out no case at all for any change."

The Hon'ble the PRESIDENT said:—"I think that is possibly the view which the Council will take, but the Hon'ble Babu Surendranath Banerjee wishes to substitute something else for amendment No. 230."*

The first motion (No. 229)* was then put and lost.

The further consideration of the second motion (No. 230)* was postponed.

SECTION 374.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "or within thirty days after the Chairman has been satisfied that there are no objections which may lawfully be taken to the grant of permission to execute the work," in lines 5, 6, 7, 8 and 9 of section 384 (*now* 374), be omitted.

The Hon'ble the PRESIDENT said:—"The motion of the Hon'ble Babu Surendranath Banerjee, that the words 'or within thirty days after the Chairman has been satisfied that there are no objections which may lawfully be taken to the grant of permission to execute the work,' in lines 5, 6, 7, 8 and 9 in section 384 (*now* 374), be omitted, is the same as the motion just lost."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"It is practically the same as motion No. 230."*

The consideration of this amendment was postponed.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the word "seven" be substituted for the word "thirty" in line 6 of section 384 (*now* 374).

He said:—"I suggest that, as the Hon'ble Dr. Asutosh Mukhopadhyaya's amendment has been accepted with reference to the site, this one may also be accepted with reference to the building, and the word 'fifteen' substituted for the word 'seven.' It follows the same principle. The order is to be communicated within fifteen days as regards the site, and then as regards the building the order may also be communicated within fifteen days."

The Hon'ble MR. BAKER said:—"I have no objection."

The motion was then put in the amended form and agreed to.

SECTIONS 375 AND 387.

The Hon'ble MR. BAKER moved—

that the following sub-section be inserted in section 385 (*now* 375), namely:—

"(1a) [*now* (2)] The decision of the General Committee shall be final, and "

that the following sub-section be inserted in section 401, namely:—

"(1a) The decision of the General Committee shall be final."

He said:—"With Your Honour's permission I will take these two amendments together. They are purely formal amendments. In various cases an appeal has been allowed from the decision of the Chairman to the General Committee; and, in all cases except two, it has been provided that the decision of the General

Committee shall be final; but in these two sections, sections 385 and 401 (*now* 375 and 387), by an oversight that was not done. I propose now to remedy that defect. One of these relates to the case of an appeal to the General Committee against the order of the Chairman disapproving of a building site or refusing permission to erect a masonry building; and the other relates to a similar appeal in the case of a hut. No further appeal is provided for in the Bill, so that, even if these words were not inserted, no appeal would lie; but it is desirable to be consistent. As in other cases we have expressly provided that the decision of the General Committee shall be final, it seems expedient to insert the same words here also in these two sections."

The motions were put and agreed to.

SECTION 377.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that clause (5) of section 387 (*now* 377) be omitted.

He said:—"I confess, Sir, that this clause has puzzled me very much. Section 385 (*now* 375) in the first place states:—

'(1) Whenever the Chairman refuses to approve a building-site for a masonry building or to grant permission to erect or re-erect a masonry building, he shall state specifically the grounds for such refusal, and the applicant may appeal to the General Committee against such refusal.

'(2) If the General Committee reject any such appeal, they shall, by written order, specifically state the grounds for such rejection.'

"This is followed by section 387 (*now* 377), which specifies the grounds upon which such refusal may be made. The section says:—

'The only grounds on which approval of a site for the erection or re-erection of a masonry building, or permission to erect or re-erect a masonry building, may be refused are the following, namely:—

- (1) that the work, or any of the particulars comprised in the site-plan, building plan, elevations, sections or specification would contravene some specified provision of this Act or some specified order, rule or bye-law made hereunder;
- (2) that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule XIVA (*now* XVII);
- (3) that any of the documents referred to in section 371A (*now* 370) have not been signed as prescribed by the said Schedule;
- (4) that any information or documents required by the Chairman under the said Schedule has or have not been duly furnished.'

"These four grounds are perfectly specific and, if I may say so without impropriety, are thoroughly business-like. Then comes the fifth ground, which is of the vaguest possible description. It provides that approval of a site may be refused on the ground—

'that the applicant has not satisfied the Chairman that there are no objections which may lawfully be taken, on any of the grounds hereinbefore in this section mentioned to the grant of the said approval or permission.'

"What the object of this is I cannot make out. Nothing similar to it finds a place either in section 238 of the existing law or in section 346 of the Bombay Act. In section 385 (*now* 375) you distinctly say that the grounds of refusal are to be specifically stated; you further provide that the applicant will be entitled to appeal to the General Committee against such refusal, so that, when the appeal comes to be heard, the validity of the ground of refusal by the Chairman may be challenged and its propriety tested. If, however, one of the grounds for the refusal is to be that the applicant has not satisfied the Chairman that there are no objections which may lawfully be taken, the provisions of the previous clauses, so specific in their terms, become absolutely infructuous. How is the poor, unfortunate applicant to prove a negative? If there are any objections which may validly be taken under the first four clauses, by all means reject the application; but do not neutralise their effect by the insertion of a clause which is repugnant to the first principles of jurisprudence."

The Hon'ble Mr. BAKER said:—"The objection taken by the Hon'ble Dr. Asutosh Mukhopadhyaya is purely theoretical. This clause is an eminently practical one, and I would venture to remind the Council that it is taken from the Bill prepared by the Calcutta Building Commission, which was presided over by Mr. Justice Trevelyan. If all applications for buildings were always drawn up in a perfectly clear and regular manner, then there would be no necessity for this particular clause; but in practice that is not the case. It may be that through ignorance a man may send up his application in such a confused and inconvenient way that it is very difficult for the Chairman to ascertain whether the application really contravenes any provisions of the law or the rules or not: and in cases which are near the border line, cases which the applicant knows are more or less doubtful, you may be certain that he will use all his ingenuity to conceal the matters which would tell against him. In cases like that it is necessary, if we are to ensure that buildings shall not contravene the law, that the Chairman shall have power to say to the applicant 'you must convince me that such and such a rule or provision of the Act or rules has not been contravened,' and you must give the Chairman power to refuse to sanction the application until the applicant has satisfied him in that manner. As I said just now on another amendment, the Building Regulations in the past have been absolutely a dead letter. They have been set at defiance in every direction, the reason being that the Chairman and the Corporation had not sufficient legal power to enforce them. We ought not to fritter away the powers that are conferred by these provisions on the Chairman. If we do, we shall not effect the improvement which it was the object of the Building Commission to bring about."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I entirely support this amendment. This view also occurred to me, but as it was more or less a legal matter I did not send in an amendment. Really the unfortunate words 'who has to build a house, has to perform a logical impossibility' in clause 6 of the Bill is a negative. I should like the Hon'ble Member in charge of the Bill to stand in that position, and I should like to see him prove poultry-houses in what of proving a negative. My hon'ble friend, the Member for the West, has appealed to the argument that the Building Commission be allowed the say by Mr. Justice Trevelyan, and that, therefore, we ought to give the pure milk for the great one." I am bound to say that they are not always masters of drafting. They sometimes make the most deplorable mistakes. That is a building difficulties in regard to will cases have occurred in connection with this section drawn up by Lord Chancellors in England. One would have expected that they were great masters in the art of drafting, and when Lord Lyndhurst drew up his will he bungled in such a hopeless manner that the case had to be fought out in a Court of law. The question is whether by this provision, which ought to be interpreted in a commonsense way, you do or do not place individuals in an altogether impossible position. They are called upon to prove a negative. Can anyone do so? I do hope, Sir, the Hon'ble Member in charge of the Bill will relent from the uncompromising attitude which he has assumed with regard to this matter; and I find, Sir, that when it approaches its time my hon'ble friend gets more and more uncompromising. I, therefore, beg to move for an adjournment."

The Hon'ble BABU JATRA MOHAN SEN said:—"I am in strong sympathy with this motion. It is difficult for any man to prove that there are no objections to a certain thing, and he cannot be expected to know what may be in the mind of the Chairman or any municipal authority. It is utterly impossible for any man to prove any such thing and to establish that his application is without any fault. If there is a fault, it is for the municipal authority to find out where the fault lies. I think this section is altogether unnecessary."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I admire the fertility of invention of the Hon'ble Member in charge of the Bill; but, with all deference to his opinion, I still think that, if there is any amendment of mine which is of an eminently practical nature, it is this one. I am very glad to hear that this section was drafted by the Building Commission, which was

Committee shall be final; but in these two sections, sections 385 and 401 (*now* 375 and 387), by an oversight that was not done. I propose now to remedy that defect. One of these relates to the case of an appeal to the General Committee against the order of the Chairman disapproving of a building site or refusing permission to erect a masonry building; and the other relates to a similar appeal in the case of a hut. No further appeal is provided for in the Bill, so that, even if these words were not inserted, no appeal would lie; but it is desirable to be consistent. As in other cases we have expressly provided that the decision of the General Committee shall be final, it seems expedient to insert the same words here also in these two sections."

The motions were put and agreed to.

SECTION 377.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved that clause (5) of section 387 (*now* 377) be omitted.

He said:—"I confess, Sir, that this clause has puzzled me very much. Section 385 (*now* 375) in the first place states:—

'(1) Whenever the Chairman refuses to approve a building-site for a masonry building or to grant permission to erect or re-erect a masonry building, he shall state specifically the grounds for such refusal, and the applicant may appeal to the General Committee against such refusal.

'(2) If the General Committee reject any such appeal, they shall, by written order, specifically state the grounds for such rejection.'

"This is followed by section 387 (*now* 377), which specifies the grounds upon which such refusal may be made. The section says:—

'The only grounds on which approval of a site for the erection or re-erection of a masonry building, or permission to erect or re-erect a masonry building, may be refused are the following, namely:—

- (1) that the work, or any of the particulars comprised in the site-plan, building plan, elevations, sections or specification would contravene some specified provision of this Act or some specified order, rule or bye-law made hereunder;
- (2) that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule XIVA (*now* XVII);
- (3) that any of the documents referred to in section 371A (*now* 370) have not been signed as prescribed by the said Schedule;
- (4) that any information or documents required by the Chairman under the said Schedule has or have not been duly furnished.'

"These four grounds are perfectly specific and, if I may say so without impropriety, are thoroughly business-like. Then comes the fifth ground, which is of the vaguest possible description. It provides that approval of a site may be refused on the ground—

'that the applicant has not satisfied the Chairman that there are no objections which may lawfully be taken, on any of the grounds hereinbefore in this section mentioned to the grant of the said approval or permission.'

"What the object of this is I cannot make out. Nothing similar to it finds a place either in section 238 of the existing law or in section 346 of the Bombay Act. In section 385 (*now* 375) you distinctly say that the grounds of refusal are to be specifically stated; you further provide that the applicant will be entitled to appeal to the General Committee against such refusal, so that, when the appeal comes to be heard, the validity of the ground of refusal by the Chairman may be challenged and its propriety tested. If, however, one of the grounds for the refusal is to be that the applicant has not satisfied the Chairman that there are no objections which may lawfully be taken, the provisions of the previous clauses, so specific in their terms, become absolutely infructuous. How is the poor, unfortunate applicant to prove a negative? If there are any objections which may validly be taken under the first four clauses, by all means reject the application; but do not neutralise their effect by the insertion of a clause which is repugnant to the first principles of jurisprudence."

The Hon'ble MR. BAKER said:—"The objection taken by the Hon'ble Dr. Asutosh Mukhopadhyaya is purely theoretical. This clause is an eminently practical one, and I would venture to remind the Council that it is taken from the Bill prepared by the Calcutta Building Commission, which was presided over by Mr. Justice Trevelyan. If all applications for buildings were always drawn up in a perfectly clear and regular manner, then there would be no necessity for this particular clause; but in practice that is not the case. It may be that through ignorance a man may send up his application in such a confused and inconvenient way that it is very difficult for the Chairman to ascertain whether the application really contravenes any provisions of the law or the rules or not: and in cases which are near the border line, cases which the applicant knows are more or less doubtful, you may be certain that he will use all his ingenuity to conceal the matters which would tell against him. In cases like that it is necessary, if we are to ensure that buildings shall not contravene the law, that the Chairman shall have power to say to the applicant 'you must convince me that such and such a rule or provision of the Act or rules has not been contravened,' and you must give the Chairman power to refuse to sanction the application until the applicant has satisfied him in that manner. As I said just now on another amendment, the Building Regulations in the past have been absolutely a dead letter. They have been set at defiance in every direction, the reason being that the Chairman and the Corporation had not sufficient legal power to enforce them. We ought not to fritter away the powers that are conferred by these provisions on the Chairman. If we do, we shall not effect the improvement which it was the object of the Building Commission to bring about."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I entirely support this amendment. This view also occurred to me, but as it was more or less a legal matter I did not send in an amendment. Really the unfortunate individual, who has to build a house, has to perform a logical impossibility: he has to prove a negative. I should like the Hon'ble Member in charge of the Bill to be placed in that position, and I should like to see him perform the impossible feat of proving a negative. My hon'ble friend, the Member in charge of the Bill, has appealed to the argument that the Building Commission was presided over by Mr. Justice Trevelyan, and that, therefore, we ought to accept the drafting of that Commission. With all the respect that I feel for Her Majesty's Judges, I am bound to say that they are not always masters in the art of drafting. They sometimes make the most deplorable mistakes. The greatest difficulties in regard to will cases have occurred in connection with wills drawn up by Lord Chancellors in England. One would have expected that they were great masters in the art of drafting, and when Lord Lyndhurst drew up his will he bungled in such a hopeless manner that the case had to be fought out in a Court of law. The question is whether by this provision, which ought to be interpreted in a commonsense way, you do or do not place individuals in an altogether impossible position. They are called upon to prove a negative. Can anyone do so? I do hope, Sir, the Hon'ble Member in charge of the Bill will relent from the uncompromising attitude which he has assumed with regard to this matter; and I find, Sir, that when it approaches tiffin time my hon'ble friend gets more and more uncompromising. I, therefore, beg to move for an adjournment."

The Hon'ble BABU JATRA MOHAN SEN said:—"I am in strong sympathy with this motion. It is difficult for any man to prove that there are no objections to a certain thing, and he cannot be expected to know what may be in the mind of the Chairman or any municipal authority. It is utterly impossible for any man to prove any such thing and to establish that his application is without any fault. If there is a fault, it is for the municipal authority to find out where the fault lies. I think this section is altogether unnecessary."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I admire the fertility of invention of the Hon'ble Member in charge of the Bill; but, with all deference to his opinion, I still think that, if there is any amendment of mine which is of an eminently practical nature, it is this one. I am very glad to hear that this section was drafted by the Building Commission, which was

presided over by Mr. Justice Trevelyan. This, at any rate, absolves my hon'ble friend from all responsibility in the matter. But, although the members of the profession to which I belong are invariably loyal and respectful to Her Majesty's Judges, they themselves will be the last people to claim infallibility or to expect an unreasoning adherence to their views. Let, us, therefore, scrutinise the matter cautiously. Contrast clause (1) of section 387 (*now* 377) with clause (5) of the same section. How can they possibly harmonise? In the very first clause of section 387 (*now* 387), you say that one ground of refusal is—

'that the work, or any of the particulars comprised in the site-plan, building plan, elevations, sections or specification would contravene some specified provision of this Act or some specified order, rule or bye-law made hereunder.'

"You follow this up by the provision that the Chairman may refuse sanction upon what must practically amount to nothing more than mere suspicion. You first introduce a very salutary rule, and, then most inconsistently and, I shall add, needlessly, proceed to destroy it by a vague and impracticable alternative."

The motion was put and lost.

SECTION 378.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "with the sanction of the General Committee" be inserted after the word "Chairman" in line 1 of clause (b) of section 388 (*now* 378), and that the words "for special reasons" in lines 1 and 2 of the same clause be omitted.

He said:—"I would ask the Council to look at section 388 (*now* 378), clause (b). This section gives a sort of dispensing power to the Chairman to allow a masonry building to be erected without reference to the Building Regulations. In a matter like this, where the power of dispensing is to be exercised, there should be some sort of supervising authority; and I would suggest the desirability of the Council adopting this amendment. A special power of exemption ought to be exercised with the approval of the General Committee. A power of dispensation ought not to be freely exercised, and it ought not to be left to the discretion of one individual, but the order of the Chairman should be subject to the approval of the General Committee. There ought to be a safeguard provided in the Act."

The Hon'ble MR. BAKER said:—"This is a small matter and one which may fairly be left to the discretion of the Chairman."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If this is a small matter, my hon'ble friend might accept my view."

The motion was then put and lost.

SECTION 383.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the motion standing in his name that in section 391D (*now* 383), sub-section (2), after "aforesaid" be inserted "either personally or by duly authorised agent."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that to section 391D (*now* 383) the following be added:—

"(5) Such appeal shall be preferred within thirty days from the date when any requisition under sub-section (1) or any order under sub-section (3) may be communicated to the owner.

"(6) No action shall be taken under section 602 (*now* 574) before the period for appealing has expired or during the pendency of an appeal which has been preferred."

He said:—"This amendment is absolutely necessary, inasmuch as no period of limitation is prescribed in the section. The Hon'ble Member in charge of the Bill has apparently realized this, and given notice of an amendment in similar terms. If that amendment commends itself to the Council, we

shall have a general section prescribing a limitation of thirty day for all appeals. In that case, it would not be necessary to press my amendment."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I would like to substitute sixty for thirty days."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I have no objection to a period of 60 days in the particular case to which my amendment refers, but I would not give 60 days in all cases."

The Hon'ble MR. BAKER said:—"I strongly object to 60 days in this particular case. There might be something to be said in favour of making it 15 days, but I certainly object to 60 days."

The motion was then, by leave of the Council, withdrawn.

The Hon'ble BABU JATRA MOHAN SEN, by leave of the Council, withdrew the motion standing in his name that in section 391D (*now* 383), sub-section (4), the words "subject to the control of the Corporation" be inserted after "shall."

SECTION 389.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA's motion that clause (5) of section 387 (*now* 377) be omitted having been lost, the Hon'ble Member, by leave of the Council, withdrew the motion, standing in his name, that clause (4) of section 403 (*now* 389) be omitted.

SECTION 393.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the words "or private cow-house" be inserted after the word "aviary" in line 6 of clause (a) of section 415 (*now* 393).

He said:—"This is a small matter. You exempt poultry-houses in which the members of the Christian community are interested. The members of the Hindu community keep cows, and they ought to be allowed the same exemption: they keep a cow or two in order to have pure milk for their families. I do not think the exemption I ask for is a very great one."

The Hon'ble MR. BAKER said:—"A cow-house of any sort is a building of an entirely different class from other buildings mentioned in this section; plant and summer houses are flimsy temporary buildings built of very light materials, and cannot cause any nuisance."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"My hon'ble friend has discreetly refrained from referring to poultry-houses, which are a distinct nuisance."

The motion was then, by leave of the Council, withdrawn.

SECTION 395.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the motion, standing in his name, that in section 416B (*now* 395), sub-section (6), be added:—

"The decision of the Local Government shall be final."

inasmuch as a similar amendment upon section 365 (*now* 367) had been lost.

SECTION 397.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved—

(1) that in section 416D (*now* 397), sub-section (1), lines 3 and 4, the words "sell" and "or otherwise transfer" be omitted,

(2) that sub-section (3) of section 416D (*now* 397) be omitted.

He said:—"These, Sir, are matters of vital importance, and, if the section in question had not been drafted by the Calcutta Building Commission, the recommendations of which are regarded with something akin to superstitious reverence, I should have been sanguine that my amendments would prove acceptable to the Council. Chapter XXIIA (*now* XXV) of the Bill contains four sections—416A, 416B, 416C and 416D (*now* 394, 395, 396 and 397)—which deal with questions of general improvement, and authorise the Corporation to acquire land and buildings for purposes of making improvements. Section 416B (*now* 395) authorises the Corporation to frame a scheme for carrying out improvements; and section 416D (*now* 397) provides that, when a scheme for carrying out such work by the General Committee has been confirmed by the Local Government, the General Committee may either proceed to carry out the work in accordance with the scheme or transfer the land absolutely to some competent person for the purpose and under the condition that he will carry out such scheme of improvement. The intention, therefore, clearly is that, when the Corporation has acquired land for the purposes of improvement, they may not only empower an outsider to carry out such work, not only lease the land for effecting such improvement, but they may also sell the land, completely sever their connection with it, and leave the purchaser to carry out the improvement. The difficulty I feel is that, as soon as a sale has been effected, the Corporation will have no further hold on the owner. There are two things to be provided for—first, the improvements must be actually carried out, and, secondly, after they have been effected, we must take care that the land is not allowed to lapse again into its original condition. If you restrict yourself only to transfers by way of lease, you can secure these two conditions at once; for you may have a covenant in the lease that if these improvements are not effected the lease shall come to an end; and you may further covenant that, if, after the improvements have been once effected, the land is again used for purposes inconsistent with the object of the lease, there will be a forfeiture of the tenancy, and the Corporation will be entitled to re-enter. But suppose that instead of granting a lease you sell the land. There is a provision in section 416D (*now* 397) that security is to be given by the purchaser for the due carrying out of the work in accordance with the scheme. You may enforce the security in the case of default. But suppose the land is reclaimed, and subsequently allowed to lapse into its original condition, what control will the Corporation possess over the transferee? None whatever, and in extreme cases the only remedy will be a fresh acquisition of the land for purposes of sanitary improvement. You can grant leases for long periods, if you like. The Bombay University, for instance, has a lease from the Government for 999 years at a rent of one rupee a year. Practically, they may be regarded as the owners of the land, but the relation of lessor and lessee, nevertheless, exists, and if you do the same thing here you will not lose all control over the transferee."

The Hon'ble Mr. BAKER said:—"This section was recommended by the Calcutta Building Commission. It is referred to in paragraph 136 of their report, and this section was drafted by them. That is the chief reason for making no alteration in the section. And, as regards the particular case of the Bombay University, the Hon'ble Member says that, though they have a lease for 999 years, the Government still has the power of control. How can that be? In what respect does a lease for 999 years differ from a sale outright? And by clause (3) of section 416D (*now* 397) power is taken to obtain security for the carrying out of the purposes for which the sale or lease was made, and the Hon'ble Member has not observed the force of the words 'in accordance with such scheme.' I don't think we ought to tie the hands of the Corporation and prevent them from selling the land outright if they find it expedient to do so. They may wish, for instance, to transfer the land to the Port Commissioners, who are just as likely to carry out the work in the way intended as the Corporation itself; and the Corporation should, therefore, be allowed to sell the land outright to the Port Commissioners. Again, the Eastern Bengal Railway may desire to carry out a work of this kind in the neighbourhood of its property at Sealdah, and there is no reason why the land should not be sold to them. I merely mention

these as possible cases, though, as a rule, I think the Hon'ble Member is right that a lease will be preferable; but we should not prevent the Corporation from selling the land if they think it expedient in any case to do."

The Hon'ble Mr. APCAR said:—"I don't think we should prevent the Corporation from selling if they think fit. If they desire to give a lease, they may do so; but I don't think it would be wise to entirely preclude them from the power to sell."

The Hon'ble Mr. OLDHAM said:—"I would ask if, in the case of the lease held by the Bombay University for 999 years, the University has power to transfer? If so, I see little difference between the grant of such a lease and a sale."

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, in reply, said:—"I regret I have not been able to make my position clear. If you sell the land, you have no hold on the purchaser. If you lease it out, you retain some control over the lessee. The reason for this difference is obvious, for, in the case of a lease, the law authorises the lessor to place restrictions upon the use of the land; in the case of a sale, the transferor completely severs his connection with the land and cannot enforce a restrictive covenant inconsistent with the rights of an absolute owner. The amendment which the Hon'ble Member in charge of the Bill is prepared to accept will answer one of my purposes. But I cannot admit that this, by any means, will settle the whole difficulty."

The Hon'ble Member's first motion was then put and lost.

The last motion having been lost, the Hon'ble Member, by leave of the Council, withdrew his second amendment.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA also moved that at the end of sub-section (2) of section 416D (now 397) be added:—

"or in the event of the lessee, after carrying out the work, using the land or buildings leased to him, or any part thereof, or allowing the same to be used, for any purpose which is inconsistent with the said scheme."

He said:—"I understand that the Hon'ble Member in charge of the Bill is prepared to accept this amendment subject to a mere verbal alteration. The form suggested by the Hon'ble Member is this:

'or in the event of the lessee, after carrying out the work, uses the land or building leased to him, or any part thereof, or allows the same to be used for any purpose which is inconsistent with the general scheme.'

"I have already explained the object of this amendment in the course of the debate upon the last motion. When action is taken by the Corporation under this chapter for the purposes of sanitary improvement, they ought to assure themselves, not only that the improvements will be duly effected, but also that, once they have been effected, they will be scrupulously maintained. I venture to think, therefore, that a right of re-entry ought to be reserved as well in the case of failure to maintain as in the case of failure to effect improvements."

The Hon'ble Mr. BAKER said:—"This is quite a reasonable amendment, and I shall be glad to accept it."

The motion was put and agreed to.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA also moved that in section 416D (now 397), sub-section (3), line 5, after the word "out" be inserted "and maintenance."

He said:—"This amendment is based on the same principle as the last one."

The motion was put and agreed to.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA also moved that to section 416D (now 397) the following be added:—

“(4) The covenant referred to in sub-section (2) shall be binding on all transferees from the original grantee; and such transferees shall be bound to give security under sub-section (3).”

He said:—“This amendment is of a somewhat technical character, and with reference to it I have been in communication with the Hon'ble the Legal Remembrancer, who has also discussed this question with the Secretary. I shall try to explain the position to Hon'ble Members as briefly as possible. There are certain covenants embodied in a lease which are said to run with the land: if so, they are binding on all transferees. Other covenants do not run with the land and are not binding on transferees without notice. Now, the question whether a particular covenant belongs to the one class or the other may, and often does, lead to ingenious legal discussions of extreme nicety and difficulty. Indeed, it would be easy to refer to cases reported in the books, not a few of which show how eminent Judges may be hopelessly divided upon a matter which appears to be very simple to lay minds. If my amendment is accepted, it will become unnecessary to discuss this difficult subject in at least one instance.”

The Hon'ble MR. HANDLEY said:—“I have much pleasure in corroborating and confirming all that the Hon'ble Member has said. This is no doubt a most difficult point of law and leads to as much trouble and expense in drawing up leases as any other point of law. If these words are not put in and these lands are transferred, the transferee may say ‘I know nothing of this’, and the Corporation will have constant trouble to compel the transferee to comply with the terms embodied in the lease. By adding these words we settle the terms upon which transfers may be made, and there can be no more litigation than might take place in the case of the lessee himself.”

The Hon'ble MR. BAKER said:—“I accept the amendment with the omission of the words after the semi-colon.”

The motion was then put, with the omission of the words after the semi-colon, and agreed to.

SECTION 400.

The Hon'ble MR. BAKER moved that in sub-section (2) of section 419 (now 400), the words “not more than two hundred feet” be substituted for the words “not less than two hundred feet.”

He said:—“This is a clerical error in the Bill which occurred originally in the Bill drafted by the Calcutta Building Commission. The word should be ‘more’ and not ‘less.’ The Hon'ble Dr. Asutosh Mukhopadhyaya has proposed an amendment to the same effect. I regret that the Select Committee did not detect the error.”

The motion was put and agreed to.

The last amendment having been agreed to the Hon'ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the similar motion standing in his name.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the word “sixteen” be substituted for the word “twenty” in line 2, and the word “ten” for the word “fifteen” in line 5, of sub-section (2) of section 419 (now 400).

He said:—“This section deals with improvements in bustees. For streets of 20 feet width I propose to substitute 16 feet, and for passages of 15 feet I propose 10 feet. These are the minima fixed; but no maxima have been fixed, and the minima may be raised to any point which the General Committee and the Executive may think fit. In favour of my amendment is the fact that it is the present practice. When I joined the Corporation bustee roads used to be 9 feet wide; we have been steadily adding to the width, and it is now 16 feet. This amendment will not fetter the hands of the Corporation in any way; they may raise the minimum to any figure they like.”

The Hon'ble MR. BAKER said:—"I will remind the Hon'ble Member that, when this matter was discussed in the Bill Committee of the Corporation, some one proposed to reduce the width of bustee roads from 20 feet to 16 feet, and a member of the Bill Committee pointed out that the Bustee Committee had gone beyond 16 feet and had worked up to 20 feet, and upon that the Bill Committee decided not to propose any modification. I fully recognise that the Corporation has realized its duty in this respect, and has been steadily increasing the width of roads in bustees. The present bye-law provides a minimum of 16 feet; but the Bustee Committee have gone beyond that; they have worked up to 20 feet. I think we should take advantage of what the Bustee Committees have done and start from the minimum which they have practically established."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"There may be cases in which it may be expedient to permit the opening of a bustee road of 16 feet; but if you fix a minimum of 20 feet and stereotype it into law, the Corporation will be unable to exercise any discretion in the matter. And when the Corporation has of its own accord resolved to have streets 20 feet in width, though the bye-law provides a minimum of 16 feet, I think the Corporation may be trusted not to adopt a lower minimum except in special cases where it may for some reason or other be necessary."

The motion was then put and lost.

SECTION 406.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the word "Corporation" be substituted for "General Committee" in line 1 of sub-section (1) of section 425 (*now* 406).

He said:—"The procedure to be followed in connection with unhealthy bustees where the urgency of the case is such that action must be taken at once is that the General Committee has to take action in the first instance. I have to call attention to section 430 (*now* 411), which says that the Corporation may at any time after the receipt of a report under section 425 (*now* 406) pass final orders. The Corporation has to deal with the report."

The Hon'ble MR. BAKER said:—"That is an entire mistake. The Corporation has only to deal with the purchase or acquisition of land which is not bustee land. Section 425 (*now* 406) provides for a report by a Medical Officer and an Engineer, the next section provides for the approval of that report, and section 427 (*now* 408) gives the General Committee power to require owners or occupiers to carry out the requisite improvements. Section 430 (*now* 411) is merely an incidental section which gives the Corporation power to acquire land which is not bustee land."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I would ask what was meant by land which is within the bustee and yet is not bustee land."

The Hon'ble MR. BAKER said:—"Bustee land is defined. It is possible you may have a masonry building within a bustee."

The Hon'ble BABU SURENDRANATH BANERJEE, in reply, said:—"But under the existing law such action is proposed to be taken by the General Committee. The inspecting officers have to submit a report; the report may propose to interfere with the rights of private persons. That is not a power vested in the Chairman, but in the Commissioners in meeting. To deal with the rights of property is a very important matter, and it is right and proper that, if the initiative is taken by the General Committee, the Corporation should have some power of supervision. The present procedure is for two medical officers to report; that report comes before the Chairman. There is a Bustee Committee which is a Committee of the Corporation; the report then goes before the Bustee Committee and is considered by them, and recommendations are made by them; the proprietors are invited to be present and make their objections, and all the objections are heard and disposed of and recommendations are made

which go before the Corporation for confirmation. The members of the General Committee who represent the rate-payers will not be in the same proportion as they are now; they will be in a minority. The representatives of the rate-payers in the Corporation will not be in the same minority; they will be in a minority, but, as I read the law, they will not be in the same minority as in the General Committee. If this matter involving the consideration of private rights is subject to the control of a body in which the rate-payers have a larger number of representatives, they will have greater confidence in the decisions of that body. That is the view of which I ask the Council to consider. The point is that the procedure under this section involves the consideration of private rights. The report may say that a road has to be run through the bustee, that certain huts are to be removed, that a tank must be filled up. All these are invasions on private rights. They may be perfectly justified, but in dealing with private rights an appeal ought to lie to a body in which the representatives of the people are to be found in larger numbers and in whose decision they will have confidence. As the Court of Directors once said, it is not necessary that we should administer justice in India, but we should inspire the people with the confidence that justice is done. Therefore, I say with confidence that some right of supervision, some sort of control, ought to be invested in the Corporation in which the representatives of the rate-payers would be found in greater proportion."

The Hon'ble MR. BAKER said:—"The Hon'ble Member has urged that this power of taking action under section 425 (*now* 406) should be taken away from the General Committee and transferred to the Corporation, because the powers conferred under that section affect private rights. I will point out that this section primarily and directly affects the question of public health, because it applies to cases which in the opinion of the Chairman are a matter of urgency, and therefore it is a matter for the General Committee to deal with. If we bring in the Corporation, we shall have canvassing, and there is a likelihood of the matter not being decided on the merits. In reference to the later clauses of the Bill, I find that a number of amendments have been proposed which would have the effect of transferring to the Corporation powers which are exercised by the Chairman or the General Committee. I strongly object to such amendments, and shall oppose every amendment which will have that effect, and I shall do so even though I may be told that my attitude is uncompromising. All these matters have been carefully considered by the Select Committee; they assigned to each municipal authority the powers and functions which they thought might most appropriately be assigned to it, and I strongly deprecate any interference with, or modification of, those powers. I think indeed that the Select Committee went too far in transferring powers from the General Committee or the Chairman to the Corporation. The position which the framers of some of the amendments seem to take up is that no power should be made over to the Chairman or to the General Committee if it can possibly be exercised by the Corporation. That is exactly the opposite and antithesis of what I hold to be the true principle. I maintain that no power should be reserved for the Corporation if it can with due propriety be exercised by the Chairman alone or by the General Committee. It is because these amendments contravene that principle that I resolutely object to them."

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA said:—"I am in full sympathy with the principles laid down by the Hon'ble Mover of the amendment, and my only regret is that this amendment does not give effect to those principles. The substance of the amendment is that in section 425, (*now* 406) clause (1), for the words 'General Committee' the word 'Corporation' should be substituted. That section deals only with the preliminary inspection, which appears to me to be executive work, and it does not seem to me to be very material whether at this stage action is taken by the General Committee or by the Corporation. The important sections are 426, 427 and 428 (*now* 407, 408 and 409). It would be much better if the Corporation were substituted for the General Committee in those sections. The preliminary inspection may be made by the order of the Chairman, but the invasion of the rights of private property should take place only by order of the General Committee subject to an appeal to the Corporation."

The Hon'ble Mr. BUCKLEY said:—"The hon'ble gentleman has referred a good deal to the rights of private property, and in defence of his amendment he again asserts a principle, which he has asserted so often, that jurisdiction should be given the highest authority in comparatively unimportant matters; he wants to give authority to the Corporation in this case in which the Bill gives it to the General Committee. The matter relates to bustees and to buildings. I would ask what the Corporation has done in this town with reference to buildings? They have excellent bye-laws in many ways, but the Corporation has rarely carried them out, and has produced a state of affairs in this town which is undoubtedly very bad. I have lately had some measurements made in a portion of this town, and, in spite of the bye-laws in existence, there are parts of Calcutta where 85 to 86 per cent. of the entire area is densely covered with buildings, and that is mainly, I think, due to the fact that the administration of the bye-laws rests with the Corporation. I doubt whether we realize fully the condition of affairs in Calcutta. There are many reports on the subject. I have one here which was made to the Building Commission. It refers to different specific areas, and speaks of the space in which natives live. I doubt whether there is any gentleman in this room who does not live or sleep in a room containing from 1,500 to 2,000 cubic feet of space, and possibly in many cases from 6,000 to 7,000 feet. On the other hand, there are people who live in as little as 120 or 130 cubic feet of space, and in one or two cases in this report as little as 60 feet. In England 800 feet is taken to be a reasonable amount of space for each person. In India, 600 feet is the minimum in barracks, I believe, and in no case is there less than 400 feet in any jail. And yet here there are people living in 60 or 100 feet, 60 feet being equivalent to 8 feet in length, 2 feet in breadth and 5 feet in height. This would have been largely prevented if the bye-laws were carried out. The Hon'ble Member again wishes to enforce the principle of centralisation which he so strongly advocates. If he does so, he will, in my judgment, do wrong."

The Hon'ble Mr. APCAR said:—"When there has been so marked a change in the constitution of the Corporation as has been brought about by the letter of the Government of India, and when a large number of Hindu members are taken away from the Corporation altogether from whom only, according to the statement by the Government, there is danger of insanitary conditions being permitted, the prospect has been changed to such a degree that there ought to be no difficulty of any kind in adopting this amendment; and, with reference to what fell from the Hon'ble Mr. Buckley with regard to the excellent bye-laws which now exist, that was not the opinion of the late Health Officer of the Corporation; and it has been our prayer, which was unheeded by the Local Government, to have further legislation to enable us to deal more effectively with questions relating to buildings. If there are existing bye-laws which are sufficient for all purposes, how is it that they were allowed to be overridden? Surely the Chairman should have prevented the infringement of those bye-laws? It has been said that the carrying out of the bye-laws was subject to the confirmation of the Corporation. The bye-laws ought not to have been allowed to be infringed in Committee, and if there had been any breach of them permitted in Committees the Chairman ought to have ruled out any such attempts when the matter came before the Corporation for confirmation. I conclude that under this Bill there will be a reference also to one of the Standing Committees; there will be some procedure and some method of dealing with such cases, and the Corporation cannot rightly be charged with having disregarded the sanitary provisions of the bye-laws in the past. When there is to be such a change, the predominance of the Hindus taken away, and the balance of power shifted in such a degree, surely the Corporation of the future may be trusted!"

The Hon'ble Mr. OLDEHAM said:—"I wish to vindicate the Corporation and what my hon'ble friend Babu Surendranath Banerjee has said on one point. As far as my information goes, the Corporation has done exceedingly well as regards bustee improvement, and the stoppage of bustee improvement work has been due to the policy of one of the Chairmen who believed the funds could be

better spent otherwise. I have heard the imperative need for bustee improvement urged over and over again in the General Committee."

The Hon'ble BABU SUREND ANATH BANERJEE said:—"It has been said that the Corporation has done badly in respect of buildings. If for argument's sake I admit the whole of that indictment, how does it affect this question of bustees? The question of bustees is not a question of buildings, and the Hon'ble Mr. Buckley knows what our action has been with regard to bustees. But I am prepared to accept the challenge with regard to buildings. This matter was carefully gone into by the Corporation. This particular indictment was made by the Calcutta Building Commission against the Building Committee of the Corporation. A statement was drawn up by the Corporation, from which it appeared that in no more than a dozen cases did infractions of the bye-laws take place under the orders of the Building Committee. Your regulations and bye-laws were defective; they bristled with inconsistencies; shrewd lawyers were always able to drive a coach and four through them. Therefore, if it has been impossible to give effect to the building regulations or bye-laws, the Corporation is not the only party to blame. The bye-laws were the bye-laws of the Corporation, confirmed however by the authority of the Government of Bengal, and, if there has been failure, the responsibility does not attach simply to the Corporation; a portion of that responsibility must be borne by the Government of this Province. But I am not concerned in defending the action of the Corporation in the matter of buildings. These observations are irrelevant to the present question. The question is—how has the Corporation been acting with regard to bustees? We have spent more than thirteen lakhs of rupees in improving bustees within the last few years; we have contracted loans; we were inspired, I might say, with something like apostolic zeal in this matter. It is on the shoulders of the Chairman appointed by the Government that the blame, if any, should be thrown. It was the deliberate policy of Mr. Ritchie that caused the works to be stopped, for he held that it is no part of the business of the Corporation to spend large sums of money on bustee reclamation. We have done our best, and, if we have not been able to do more, it is not our fault. We have been restrained by the Executive. If it is true that the Corporation has done all that it could possibly do, why does the Hon'ble Member in charge of the Bill propose to take away this power from the Corporation? The Corporation has done well; it has done admirably; it has received the acknowledgments of the Government for what it has done. If that is the verdict of competent authority, I ask with what show of reason and justice can you withdraw the power which the Corporation at present possess of taking the initiative? There is not even the shadow or semblance of reason for withdrawing those powers, except in the statement to which I listened with amazement that no power should be left to the Corporation which could be exercised by any other authority."

The Hon'ble MR. BAKER said:—"With due propriety."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"There is hardly a power which cannot be exercised with due propriety by some lower authority. If that statement is accepted, why not do away with the principle of local self-government? If this principle is to find acceptance with this Council, it will be far simpler to do away with the semblance and show of local self-government, which is attempted to be preserved under this Bill, and make the Municipality a department of the Government. I think this a wholly unjustified statement to make, and I am perfectly certain that a system like that is a system with which the Local Government can sympathise. My hon'ble friend himself says that the Bill does not do away with the principle of local self-government, but involves only a re-adjustment of the principle. If he holds that no power should be reserved to the Corporation which can be exercised by any other municipal authority, if that principle is accepted, then local self-government is at an end. The Hon'ble Member, moreover, has remarked that it is undesirable to give this power to the Corporation because there will be canvassing. Is it not much easier to canvass 12 persons than 50? If you admit that there is canvassing, and admitting it to be true

that there has been canvassing in the past, the fact remains that in spite of such canvassing the Corporation did their duty; therefore, despite whatever canvassing there was, the Corporation did their duty in the past, and the Corporation may be trusted to do their duty in the future. Therefore, I submit that no case has been made out for withdrawing this power. It is a matter of the first importance that when you deal with private rights you should have a tribunal which should command the confidence of those whose rights are invaded. The matter will be dealt with in the first instance by the Chairman and the General Committee, and then an appeal should lie to the Corporation. I think such a procedure is consistent with sound sense and reason. I hope that in consideration of all these circumstances, namely, that the Corporation has done its duty well, that it is a body which commands the confidence of the public, and that it is necessary that that confidence should be maintained, this amendment will be accepted by the Council."

The motion being put, the Council divided as follows:—

Ayes 6.

The Hon'ble Raja Ranajit Sinha Bahadur,
of Nashipur
The Hon'ble Babu Jatra Mohan Sen.
The Hon'ble Babu Beikantu Nath Sen.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Apar.
The Hon'ble Mr. Asutosh Mukhopadhyaya.

Noes 12.

The Hon'ble Mr. Buckley.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Handley.
The Hon'ble Rai Durga Gati Banerjee,
Bahadur.
The Hon'ble Mr. Mackenzie.
The Hon'ble Mr. Spink.
The Hon'ble Sahibzada Mahomed Bakhytar
Shah.
The Hon'ble Khan Bahadur Maulvi
Delawar Hossain Ahmed.
The Hon'ble Mr. Oldham.
The Hon'ble Mr. Baker.
The Hon'ble Mr. Bolton.
The Hon'ble Mr. Slack.

So the amendment was lost.

The Council was then adjourned to Saturday, the 23rd September, 1899.

CALCUTTA;

The 16th January, 1900.

F. G WIGLEY,

Assistant Secretary to the Govt. of Bengal,
Legislative Department.

*Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal,
assembled under the provisions of the Indian Councils Acts, 1861 and 1892.*

The Council met in the Council Chamber on Saturday, the 23rd
September, 1899.

Present:

The Hon'ble SIR JOHN WOODBURN, K.C.S.I., Lieutenant-Governor of Bengal,
presiding.

The Hon'ble MR. W. B. OLDHAM, C.I.E.

The Hon'ble MR. R. B. BUCKLEY.

The Hon'ble MR. C. W. BOLTON, C.S.I.

The Hon'ble MR. E. N. BAKER.

The Hon'ble RAI DURGA GATI BANERJEA, BAHADUR, C.I.E.

The Hon'ble MR. C. E. BUCKLAND, C.I.E.

The Hon'ble MR. F. F. HANDLEY.

The Hon'ble MR. F. A. SLACK.

The Hon'ble KHAN BAHADUR MAULVI DELAWAR HOSAIN AHMED.

The Hon'ble BABU JATRA MOHAN SEN.

The Hon'ble MR. T. W. SPINK.

The Hon'ble SAHIBZADA MAHOMED BAKHTYAR SHAH, C.I.E.

The Hon'ble MR. D. F. MACKENZIE.

The Hon'ble MR. J. G. APCAR.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA, M.A., D.L., F.R.A.S., F.R.S.E.

The Hon'ble BABU BOIKANTA NATH SEN.

The Hon'ble BABU SURENDRANATH BANERJEE.

QUESTION AND ANSWER.

GUN LICENSES IN DACCA DISTRICT.

The Hon'ble BABU SURENDRANATH BANERJEE said :—

"Will the Government be pleased to state the number of gun licenses issued in the Dacca District in 1898, the number of such licenses issued in 1899, the number of applications for gun licenses refused in 1899, and the reasons for such refusal?"

"Is the Government aware that river dacoities have taken place within the last six months at Souka Bazar, Ghiar Bazar, Bhadra and other places within the subdivision of Manikganj? Will the Government be pleased to state the cash and other property stolen from the boats of traders and purchasers of jute in connection with these dacoities? What step does the Government intend to take to remedy this state of things?"

The Hon'ble MR. BOLTON replied :—

"The number of gun licenses issued in the Dacca District in 1898 was 2,735; and up to date in 1899 1,685 have been issued. There is thus a decrease of 1,050. The Commissioner has explained that the reduction is due to the applications for renewal of licenses having been closely scrutinised in the present year, in order to prevent fire-arms being held by those who have no need for them for the protection of person or property, or by persons who use them for the indiscriminate slaughter of birds for their plumage. He mentions that the destruction of birds has been carried on to such an extent that even paddy birds have been almost exterminated. The opinion of the Government in regard to this reduction is not asked in the Hon'ble Member's question; but I may take the opportunity of informing him that the suddenness of the reduction has not the approval of the Government, and that this opinion is being communicated to the local officers.

"There have been two river dacoities in the Manikganj Subdivision during the present year, the property stolen being valued at Rs. 190, including Rs. 155 in cash, in one case, and at Rs. 517, including Rs. 507 in cash, in the other. These dacoities occurred in August and were the work of a local gang. A clue has been obtained, which will, it is expected, ensure the conviction of the dacoits and the breaking up of the gang."

CALCUTTA MUNICIPAL BILL.

SECTION 62.

The Hon'ble MR. BAKER moved that in section 55 (*now* 62*), line 1, after the word "resignation" the word "removal" be inserted.

He said :—"This is a consequential amendment. It will be remembered that, on the motion of the Hon'ble Babu Surendranath Banerjee, a section was inserted in the Bill authorising the Local Government, at the instance of the Corporation, to remove any Commissioner who had been found guilty of disgraceful conduct or misconduct in the discharge of his duties. In consequence of that new section, it is necessary to insert the word "removal" in section 55 (*now* 62) which provides for the filling up of vacancies by nominations in the event of elections failing."

The Hon'ble BABU SURENDRANATH BANERJEE said :—"I have great pleasure in supporting the amendment."

The motion was put and agreed to.

SECTION 116.

The Hon'ble MR. BAKER moved that in section 108 (*now* 116), line 2, for the words "any member of the General Committee" the words "any other person" be substituted.

* The sections of the Bill having, under the direction of the Council, been re-numbered, the present number of each section is inserted in brackets wherever the new numbering differs from the old.

He said:—"It will be remembered that on the motion, I think, of the Hon'ble Babu Surendranath Banerjee, an amendment was carried to the effect that cheques are to be signed, in the absence of the Chairman or Vice-Chairman, by some person appointed by the Chairman with the approval of the General Committee. In consequence of that, it becomes necessary to insert the words 'any other person' in section 108 (*now* 116), line 2."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I beg to support the amendment."

The motion was put and agreed to.

SECTION 152 AND NEW SCHEDULE.

The Hon'ble DR. ASUTOSH MUKHOPADHYAYA moved—

(1) that for sub-section (1) of section 148B (*now* 152), the following be substituted, namely:—

"(1) All valuations of buildings and lands situated in the districts mentioned in column 1 of Schedule IVC (*now* VII), which have been made by competent authority and are in force at the commencement of this Act, shall remain in force for the periods terminating on the dates respectively prescribed in that behalf in column 2 of that Schedule; and the annual value at which buildings and lands in each such district are to be assessed after the date so prescribed shall be fixed by the Chairman for a period of six years, and thereafter for successive periods of six years."

(2) that the following schedule be added to the Bill, namely:—

SCHEDULE IVC (*now* VII).

Dates up to which valuations made before the commencement of this Act are to remain in force.

1	2
District.	Date up to which valuations made before the commencement of this Act are to remain in force.
Ward No. 1	... The 31st March, 1902.
" " 2	... The 31st March, 1903.
" " 3	... The 30th September, 1902.
" " 4	... The 30th September, 1903.
" " 5	... The 31st March, 1904.
" " 6	... The 30th September, 1901.
" " 7	... The 30th September, 1904.
" " 8	... The 31st March, 1905.
" " 9	... The 30th September, 1905.
" " 10	... The 31st March, 1906.
" " 11	... The 30th September, 1900.
" " 12	... The 31st March, 1901.
" " 13	... The 31st March, 1901.
" " 14	... The 30th September, 1900.
" " 15	... The 31st March, 1906.
" " 16	... The 30th September, 1905.
" " 17	... The 31st March, 1905.
" " 18	... The 31st March, 1905.
" " 19	... The 30th September, 1904.
" " 20	... The 31st March, 1904.
" " 21	... The 30th September, 1903.
" " 22	... The 31st March, 1903.
" " 23	... The 30th September, 1902.
" " 24	... The 31st March, 1902.
" " 25	... The 30th September, 1901.

He said:—"This amendment, Sir, is of some practical importance, and I would take the liberty of explaining to the Council its meaning and effect. Under the existing law, that is, the law of 1888, the whole of Calcutta is divided into districts for purposes of assessment. As a matter of fact, the number of districts corresponds with the number of wards in the city. It was intended by the Act that the valuation of all houses situated within any district should take effect from one day and should also terminate on one day; that is to say, although it is practically impossible to value all the houses in the ward on the same day, yet for purposes of administrative convenience it was to be taken that the valuation took effect in each of the wards from a certain date and terminated on a specified date. That is the way in which the business of the Corporation was carried on, and everybody thought that to be the law, until last year. But by a decision of the Small Cause Court (which the High Court could not set aside or revise) the matter was explained to be just the other way. The facts of that particular case were these. In 1891 the premises of a rate-payer were valued. He preferred an objection, and, by reason of the very large number of such objections preferred by other rate-payers all over the city, his objection could not be disposed of till 1895. Then in 1897, that is to say, six years from the date when the original assessment was made, the Corporation again made a fresh assessment. The rate-payer took an objection that he was entitled to have the six years counted from the date that his objection was disposed of, that is to say, six years from 1895. His objection was overruled by the Corporation. Then he preferred an appeal to the Small Cause Court, and the Judge of the Small Cause Court held that there was no cycle for each ward, but that there was a cycle for each separate holding in the city. The matter was taken up before the High Court, and that Court held that, whatever the merits or the demerits of the decision of the Small Cause Court might be, it had no jurisdiction to interfere in the matter at all. Therefore, in order to prevent the recurrence of such a case in future, section 148SS (*now* 169) was put into this Bill. That section provides that 'when the valuation of any building or land is revised in consequence of an objection made under section 148K (*now* 160) or an appeal preferred under section 148M (*now* 162), the revised valuation shall continue in force for the unexpired portion of the period for which the first-mentioned valuation was made, and no longer.' This would be sufficient to meet all future cases, but unfortunately this section has no retrospective effect; and the consequence is that if we start with a different cycle for each different holding in the city, in spite of section 148SS (*now* 169), the difficulty will continue. So far, however, as that section applies, when the Corporation has to assess a holding which has never been assessed before, the difficulty will not arise. Take for instance the rate-payer whose case was decided by the Small Cause Court. He has got a decision in his favour that the assessment in his case is to run for six years from 1895, so that in his case there will be a cycle beginning with 1895. Now, it is quite manifest that, if instead of there being a cycle for each ward there be a separate cycle for each holding, it will be absolutely impossible to carry on the business of the Corporation. To-day you may find that there are five houses in a particular ward the assessment of which has come to an end; to-morrow you will find 25 houses in five different wards the assessment of which has come to an end, and so on. The amendment of which I have given notice will bring that state of things to an end. My original suggestion was that an arbitrary period should be fixed, that is to say, after two years from the date on which this Act comes into operation, the assessment of all the holdings in the city should terminate. It was, however, pointed out to me by the Hon'ble Member in charge of the Bill that that would be highly inconvenient. He was good enough to place details at my disposal showing the precise dates on which the valuations in each ward were intended to take effect, and would have taken effect but for the decision of the Small Cause Court. We have practically devised an amendment which would nullify the effect of the decision of the Small Cause Court Judge, which is certainly against the spirit, if not also against the letter, of the existing law."

The Hon'ble MR. BAKER said:—"I support this amendment, Sir, and I think the Corporation and the Council are indebted to the Hon'ble Mover of the

amendment for having brought this matter to our notice. But for his amendment we should have perpetuated the extreme inconvenience which has been caused by the decision of the Small Cause Court in the case to which he has alluded. The amendment in its present form simply gives effect to what the original intention of the law was, and also to the practice of the Corporation in the past; and I think it may safely be commended to the acceptance of the Council."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I want to say one word in support of it. The Corporation think, and many others think, that the Small Cause Court made a mistake, and, probably, if the High Court had jurisdiction in the matter, the decision would have been reversed. It is an exceedingly difficult matter, and it is as well that it should be settled finally in the way it is proposed to be settled. The Hon'ble Mr. Baker suggested that the best thing to be done would be to fix the dates in respect of each ward. I think that the Hon'ble Mr. Baker obtained his details from the office of the Corporation, and it seems to me that the amendment, including the details, is a satisfactory settlement of a difficult and intricate problem."

The motions were then put and agreed to.

The last motions having been carried, the Hon'ble Dr. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the motion standing in his name that in section 148B (*now* 152), sub-section (1), for the words "the period for which they were so made" be substituted "two years for the commencement of this Act."

SECTIONS 230, 231 AND 232.

The Hon'ble Dr. ASUTOSH MUKHOPADHYAYA moved—

(1) that for clause (a) of section 220T (*now* 230), the following clauses be substituted, namely:—

- "(a) pay the sum demanded, together with any fee imposed under section 220C (*now* 214), sub-section (2), or
- (b) send a letter to the Chairman, enclosing the sum demanded, and electing to be prosecuted under section 606 (*now* 578), or";

(2) that the present clause (b) of section 220T (*now* 230) be lettered "(c)";

(3) that in sub-section (1) of section 220U (*now* 231), "clause (b)" be substituted for "clause (a)," and that the following be inserted after "mentioned," namely:—

"and the sum deposited under that clause shall be deducted from the amount of any fine imposed under section 606."

(4) that in sub-section (2) of section 220U (*now* 231) "clause (c)" be substituted for "clause (b)";

(5) that in section 220V (*now* 232), line 3, for the word "either" the word "any" be substituted, and that the words "and has not paid the whole amount of the demand" be omitted.

He said:—"It is unnecessary to trouble the Council at any length on this matter. It was very fully discussed on a previous occasion, and my object in placing these amendments before the Council is simply to give effect to what I take to be the law on the subject. It is quite clear from section 220V (*now* 232) that there is a third alternative to the two mentioned in section 220T (*now* 230), and my first amendment gives effect to that view. Then the next amendment gives effect to my contention that, if under clause (a) any defaulter has deposited the sum required and is then prosecuted, the sum deposited is to be set off against any fine which may be imposed under section 606 (*now* 578). I further propose that in sub-section (1) of section 220U (*now* 231) 'clause (b)' be substituted for 'clause (a),' and that the following words be inserted after 'mentioned,' namely, 'and the sum deposited under that clause shall be deducted from the amount of

any fine imposed under section 606 (*now* 578).’ It will also be noticed on reference to section 606 (*now* 578) that the second sub-section of that section says that ‘such fine when levied shall be taken in full satisfaction of the demand on account of such license.’ I pointed out to the Council on the last occasion that it cannot possibly have been intended that the man should be fined, and that in addition the sum which he had deposited should be confiscated. The other amendments are simply consequential, and do not require any explanation.”

The Hon’ble MR. BAKER said:—“I support the amendments, Sir. They are merely intended to give effect to what the law is as it stands in the Bill, and they express that intention more clearly than the original draft.”

The motions were then put severally and agreed to.

The last motions having been carried, the Hon’ble DR. ASUTOSH MUKHOPADHYAYA, by leave of the Council, withdrew the following motions standing in his name:—

(1) that in section 220T (*now* 230), clause (a), the words “and enclosing the sum demanded” be omitted;

(2) that in section 220T (*now* 230), clause (b), after the word “and” be inserted “after depositing the amount demanded;”

(3) that to section 220T (*now* 230) the following be added, namely:—

“(c) or pay the sum demanded, together with any costs incurred under section 220C (*now* 214).”

SECTION 253.

The Hon’ble DR. ASUTOSH MUKHOPADHYAYA moved that the following further proviso be added to section 252 (*now* 253), namely:—

“Provided also that, if any building in respect of which any notice is issued under this section is occupied by a person other than the owner, the occupier shall be bound to make to the owner, in respect of all works executed in pursuance of such notice, the payments prescribed by clause (a) or clauses (a) and (b), as the case may be, of section 247 (*now* 250); and such payments may be enforced in the manner prescribed by section 249 (*now* 252).”

He said:—“The object of this proviso is to bring section 252 (*now* 253) into harmony with section 247 (*now* 250). It will be noticed that section 247 (*now* 250) authorises the occupier of any masonry building who holds the same direct from the owner to call upon the owner to provide for the supply of water. But it also provides that he can get the water supply only on certain terms. These terms are defined in sub-section (2) of the section; the first of them is that the occupier shall pay during the residue of his term of occupation interest at the rate of one *per cent. per mensem*, calculated from the date of the completion of the works, on the cost of all works so provided by such owner. The second is that, if the premises do not abut upon some street in which there is a supply main, the occupier shall pay the cost of connecting the premises with the nearest supply main. It seems to me that these conditions are based upon a very just and equitable principle. Suppose a tenant takes the lease of a house on Rs. 20 a month at a time when there is no water-connection. He wants to have the benefit of the supply of filtered water. The law says that he is entitled to call upon the owner to incur the necessary expenditure, but at the same time the law says that he must pay for the benefit, and that is only reasonable, because this supply of water was not one of the terms of the original contract; what he has to pay, therefore, is interest at the rate of one *per cent. per mensem* upon the expense incurred by the owner. Now section 252 (*now* 253) deals with cases in which not the occupier but the Chairman compels the owner to have the necessary connection made. My contention on the last occasion was that sections 247 and 252 (*now* 250 and 253) ought to be mutually exclusive, that is to say, that the provisions of section 252 (*now* 253) need not be made applicable to the cases in which there is a tenant who might proceed under section 247 (*now* 250). I then relied mainly upon the ground that it would not be necessary in such a case for the Chairman to interfere, in order to enable the tenant to get the benefit at the expense of the owner. But the Council decided otherwise, and I loyally accept that decision. I accept that decision with regard to section 252 (*now* 253) in the case where the building is not in the occupation of